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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 72

J. D. SHELLEY, ETHEL LEE SHELLEY, HIS WIFE, AND JOSEPHINE FITZGERALD, PETITIONERS,

vs.

LOUIS KRAEMER AND FERN W. KRAEMER, HIS WIFE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

PETITION FOR CERTIORARI FILED APRIL 21, 1947.

CERTIORARI GRANTED JUNE 23, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No.

J. D. SHELLEY AND ETHEL LEE SHELLEY, HIS WIFE, AND JOSEPHINE FITZGERALD, PETITIONERS,

vs.

LOUIS KRAEMER AND FERN E. KRAEMER, HIS WIFE

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 3, 1947.

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IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI

Wm. W. Koerner, Judge Div. No. 3

No. 91283 In Equity

FERN E. KRAEMER and LOUIS W. KRAEMER, her husband, Plaintiffs,

vs.

J. D. SHELLEY and ETHEL LEE SHELLEY, his wife and Josephine Fitzgerald, Defendants.

STIPULATION AS TO FACTS IN TRANSCRIPT OF THE RECORD

For the purpose of the transcript of record on appeal it is stipulated by and between counsel for plaintiffs and defendants that the following are facts and were in evidence on the trial of the case:

1. The plaintiffs own the property known and numbered as 3542 Labadie avenue, and are the ultimate grantees and successors in title to Emma G. Thomson and William I. Thomson, the chain of title being as follows:

Book 1376, page 26, from Lennox to W. I. Thomson.

Book 2360, page 483, from W. I. Thomson to Hoppe.

Book 2377, page 75, from Hoppe to Emma Thomson.

Probate estate No. 58427, by will of Emma Thomson to William I. Thomson.

Book 4304, page 450, William I. Thomson to Roy Thomson

Book 4461, page 387, Roy Thomson to William I. Thomson.

Probate estate No. 66265 by descent from William I. Thomson to Fern Kraemer.

Book 5183, page 489, Fern Kraemer to Hazel Chapman.

Book 5183, page 490, Hazel Chapman to Louis W. Kraemer and Fern Kraemer.

1a. The defendants own and occupy property known and numbered as 4600 Labadie avenue, are the ultimate grantees

and successors in title to one Samuel Werner, and the chain of title from Werner to the defendants is as follows:

Book 2015, page 221, Steinlege to Samuel Werner.

Book 2424, page 402, Samuel Werner to Samtine Real Estate Co.

Book 3706, page 275, Samtine Real Estate Co. to Roberson.

[fol. 4] Book 3645, page 518, Roberson to Barnes.

Book 4379, page 291, Barnes to Sohlmann.

Book 6347, page 455, Sohlman to Paulis.

Daily No. 124 dated 9/10/45, deed, Paulis to Geraldine Fitzgerald.

1b. Defendant Geraldine Fitzgerald deeded to the defendants Shelley on September 11, 1945.

1c. The restrictive covenant was signed by S. Werner.

1d. The property belonging to the plaintiffs and the property belonging to the defendants are both located in city blocks 3710b and 3711b of the City of St. Louis, Missouri.

1e. When this restrictive agreement was signed there were 39 owners of land is the district sought to be restricted, being city blocks 3710b and 3711b, who owned 57 parcels of land. 30 landowners owning 47 parcels of land signed the restriction agreement. The total frontage on Labadie avenue comprising the district sought to be restricted was 1569 feet, 8 inches; and the property owned by the 30 owners signing the agreement had a frontage totalling 1245 feet, 4¾ inches. 9 owners of 10 parcels, comprising a total frontage of 324 feet, 3¼ inches, did not sign the agreement.

2. It is further stipulated and agreed that the following finding of fact by the Court may be considered as substantiated by the evidence in regard to the matters therein stated, to-wit:

"6. On the South side of Labadie avenue, in the immediate vicinity of 4600 Labadie, the houses, numbered from east to west, the race and length of their tenancy of their respective occupants, and whether or not the owners in 1911 signed the restriction, are as shown by the following table.

[fol. 5]

House Number	Signed Restriction	Occupancy
4556	No	White, within memory of witnesses
4560	No	White, within memory of witnesses
4562	No	Negro for 23 years
4600	Yes "S. Werner"	White to October 9, 1945
4604	Yes	White, within memory of witnesses
4606	No	Negro to 1944, then white
4608	No	Negro since 1882
4610	No	Negro 30 years or more
4614	No	Negro at least 23 years

Those numbers that have been occupied by Negroes have been occupied by successive owners and tenants, some moving out and others moving in. No property in the district, other than as shown in the foregoing table, is now occupied by Negroes or ever has been, so far as the evidence shows."

3. It is further stipulated and agreed that said restriction agreement does not contain the lot number of any parcel or lot of ground mentioned therein, nor does it contain any reference to any other recorded document wherein such information may be found.

4. It is further stipulated and agreed that, at the time said restriction agreement was signed, the evidence did not show that two of the persons signing it had any property, or any interest therein, located in said city blocks mentioned therein.

5. It is further stipulated and agreed that the equivalent of twenty-four 25-foot lots, fronting on the west line of Taylor avenue and situated in the east ends of City Blocks 3710B and 3711B, are not restricted; and that said lots are separated from other lots in the east end of said blocks which are restricted by an alley fifteen feet wide.

[fol. 6] IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

Transcript of the Record

AMENDED PETITION—October 18, 1945

1. Plaintiffs state that they are the owners of property located in City Blocks 3710b and 3711b, more specifically described as 4532 Labadie avenue, of the City of St. Louis, State of Missouri; that Fern E. Kraemer acquired the title to said property by descent from William I. Thomson, who took by deed from Roy H. Thomson, and who died intestate in 1927.

2. Plaintiffs further state that they are successors in title to William I. Thomson and Emma Thomson who were signatories on a certain instrument dated the 16th day of February, 1911, and are successors to two of the parties of the first part mentioned in said agreement, and that their authority to prosecute this action is based upon the provisions of that instrument.

3. Plaintiffs state that said instrument was filed of record in the office of Recorder of Deeds of St. Louis on the 17th day of February, 1911, and is recorded in Book 2400 on page 488 of said records.

4. Plaintiffs state that said instrument is a "Restriction Agreement", the purpose of which and the legal effect of which is to bind the signatories, their heirs, assigns, legal representatives and successors in title to restrict the property owned by each of said signatories against sale to, or use or occupancy by people not wholly of the Caucasian race and to prohibit by the agreement of the signatories the sale to, leasing or renting to, or transferring by any means whatever, said property to persons of the Negro or Mongolian race.

[fol. 7] 5. Plaintiffs state that said instrument is also signed by one Samuel Werner; that said Samuel Werner was, on the 16th day of February, 1911, and for sometime thereafter, the legal title holder of a certain piece of property in City Block 3711b of the City of St. Louis, being more specifically described as 4600 Labadie avenue.

6. Plaintiffs state that the above mentioned restriction agreement, among other things, contained the agreement

of the parties thereto that none of the property in said city blocks, 3710b and 3711b, by them owned should be sold, conveyed, leased, or rented to persons not wholly of the Caucasian race, or to persons of the Negro or Mongolian race; that none of the parties thereto or their successors should deliver possession to or permit to be occupied by any of the said parcels of land belonging to the parties of the first part in said agreement, a Negro or Negroes; that the signatories thereto agreed that their mutual promises in said agreement contained should be binding on the respective heirs, assigns, legal representatives and successors of such signatories.

7. Plaintiffs state that said agreement provided that it should remain and be in force and effect for a period of 50 years from the date thereof, unless sooner terminated by writing executed and acknowledged by the owners in fee of all of the property therein included; that such agreement has not been so terminated in writing or otherwise and is still in full force and effect.

8. Plaintiffs state that it was intended by the parties, and it was expressly agreed, that such agreement and such restrictions on their property should attach to and run with each of the parcels of land belonging to the parties and described in said agreement, and that such agreements between the parties were covenants and did run with the land and do now run with the land; that the signatures of the parties thereto were duly acknowledged by a notary public and that said agreement was duly recorded in the office of recorder of deeds of the City of St. Louis, state of Missouri.

[fol. 8] 9. Plaintiffs state that Samuel Werner, signatory to the agreement aforesaid and owner of the property described as 4600 Labadie avenue, did, in the month of April, 1911, transfer said parcel to Samtine Real Estate Company; that thereafter, on September 6, 1922, Samtine Real Estate Company conveyed said property to Frank R. Roberson; that thereafter, on September 13, 1922, the said Roberson conveyed the said property to Pearl G. Barnes; that thereafter, on February 1, 1926, the said Pearl G. Barnes conveyed the said property to John and Mathilda Sohlmann; that thereafter, on May 18, 1945, the said John and Mathilda Sohlmann conveyed the said prop-

erty to Oscar Paulis and Lorraine Paulis; that thereafter, on September 10, 1945, the said Oscar Paulis and Lorraine Paulis conveyed said property to Josephine Fitzgerald, defendant herein; that thereafter, on September 11, 1945, defendant Josphine Fitzgerald conveyed said property to J. D. Shelley, defendant herein, and Ethel Shelley, his wife, defendant herein.

10. Plaintiffs state that J. D. Shelley and Ethel Shelley, his wife, defendants herein, are claiming to be the owners of said property and are claiming to have a deed to said property and are exercising acts of ownership over the said property and are collecting rents through their agent for a portion of said property.

11. Plaintiffs state that defendants J. D. Shelley and Ethel Shelley, his wife, are Negroes and are not wholly of the Causasian race.

12. Plaintiffs state that defendants J. D. Shelley and Ethel Shelley, his wife, are threatening to move their belongings into said property known as 4600 Labadie avenue, and have indicated their intention to take up their residence in said property, all in violation of said restriction agreement aforementioned.

13. Plaintiffs state that the deed of conveyance to defendants J. D. Shelley and Ethel Shelley is in violation of said restriction agreement and is therefore void, and that defendants Shelley have no right at law to acquire the title to or reside in, or take possession of said property,

[fol. 9] 14. Plaintiffs state that the defendants Shelley are the ultimate grantees or assigns, or assigns and successors in title, to Samuel Werner, signatory to the restriction agreement aforementioned:

15. Plaintiffs state that the ownership or occupancy or both of the defendants Shelley of said property is in violation of the terms of said restriction agreement and that as a direct result thereof plaintiffs will suffer irreparable injury and irremediable damages to their property; that unless defendants Shelley be restrained from owning or occupying, and both owning and occupying, said property, plaintiffs will in the future suffer irreparable injury and irremediable damage to their property; that unless de-

fendant Josphine Fitzgerald be restrained from conveying, during the term of the restriction agreement aforesaid, said property to persons not wholly of the Caucasian race or to persons of the Negro or Mongolian race, plaintiffs will suffer irreparable injury and irremediable damages to their property.

16. Plaintiffs state that they have no adequate remedy at law.

17. Plaintiffs state they have filed their surety bond executed by the New Amsterdam Casualty Company, a surety corporation, as surety.

Wherefore, plaintiffs pray the Court for relief as follows:

a. That this honorable Court forthwith issue its temporary restraining order restraining the defendants herein, J. D. Shelley and Ethel Shelley, his wife, from taking possession of or moving their belongings into or residing in said property known as 4600 Labadie avenue.

b. That this honorable Court forthwith issue its order commanding defendants to show cause, if any they have, why a temporary injunction should not be issued restraining and enjoining the defendants Shelley from entering into, or taking possession of, or residing in said property; [fol. 10] that this Court issue its order commanding defendant Josphine Fitzgerald to show cause, if any she has, why a temporary injunction should not be issued restraining and enjoining her from conveying during the period of the restriction agreement aforesaid, said property known as 4600 Labadie avenue to persons not wholly of the Caucasian race, or to persons of the Negro or Mongolian races.

c. That upon final hearing herein this honorable Court make permanent and perpetual its injunction restraining and enjoining defendants Shelley herein from taking possession of, or entering into, or residing in, the property known as 4600 Labadie avenue; that the defendant Josephine Fitzgerald be restrained and enjoined from conveying during the period while the restriction agreement aforesaid remains in force and effect, said property in violation of the agreement aforesaid.

d. That the title to said property be divested out of defendants J. D. Shelley and Ethel Shelley, his wife, and

vested in their immediate grantor or grantors, or in such persons or persons wholly of the Caucasian race, and not of the Negro or Mongolian race, as the Court may determine.

c. That said restriction agreement above mentioned be declared by the Court to be valid and in full force and effect.

f. That the Court make such further orders and decrees as to the Court seem just and proper.

g. That the defendants have judgment for their costs.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER—OCTOBER 9, 1945

Now at this day come the plaintiffs by their attorney and present to the Court a verified petition this day filed, praying among other things for the issuance of a temporary [fol. 11] restraining order and a temporary injunction, and the Court having seen and examined the same, and being sufficiently advised thereof, upon the motion of attorney for the plaintiffs doth order that the defendants be and appear in this Court and in Division #3 thereof on Thursday the 11th day of October, 1945, at 10 a. m., and then and there to show cause, if any there be, why a temporary injunction should not be granted as prayed for in plaintiffs' petition.

It is further ordered that, until the hearing of said motion and order herein, conditioned upon the plaintiffs giving a good and sufficient bond in the penal sum of $500, with surety to be approved by the Court, judge or clerk thereof in vacation, which said bond in the penal sum of $500 with New Amsterdam Casualty Company as surety is now approved and ordered filed, the defendants J. D. Shelley and Ethel Shelley, his wife, do absolutely desist and refrain from taking possession of, or entering into, the property known as 4600 Labadie avenue.

And it is further ordered that a copy of this order be served on each defendant herein named at least 24 hours before the time fixed for hearing the motion as aforesaid.

Dated at St. Louis, Missouri, this 9th day of October, 1945.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

AMENDED RETURN TO ORDER TO SHOW CAUSE AND ANSWER—NOVEMBER 1, 1945

Now, this day, come the defendants herein and for their return to the order to show cause, and for answer to the petition of the plaintiffs, state the following:

1. Defendants J. D. Shelley and Ethel Lee Shelley admit that they are the owners of property located on the south side of Labadie avenue, between Taylor avenue and Cora [fol. 12] Avenue, in the City of St. Louis, Missouri, and known and numbered as 4600 Labadie avenue; and admit that they acquired the same from the defendant, Josephine Fitzgerald, for a good and valuable consideration; that they are exercising the rights of ownership in and over said property and are now, and were at and prior to the time when this action was brought occupying said property as their home; but all of the defendants herein aver that the sale of said property to the defendants Shelley and wife by the defendant Josphine Fitzgerald was in every way valid and lawful, and was in keeping with the property rights of all of said defendants in reference to said property, its transfer and ownership, and according to law.

2. Defendants state that they have no knowledge of the ownership of property claimed by the plaintiffs in city blocks 3710B and 3711B, and therefore neither affirm or deny said claims.

3. Defendants further state that they have no knowledge of the ownership of other parcels of property located in said City blocks as set forth in the plaintiff's petition, and they therefore neither admit nor deny said allegations.

4. Defendants further state that they had no knowledge of the existence of the restrictive agreement pleaded by the plaintiffs prior to the sale and transfer of said property to the defendants J. D. Shelley and Ethel Lee Shelley; that they relied upon the fact which was common knowledge, that for more than fifteen years Negroes or colored people had owned and occupied as homes several parcels of property in the block and upon the street where the property in question in this suit is located; that their knowledge of

the existence of said restrictive agreement against the sale to and occupancy by Negroes of the property located in the city blocks aforesaid has been learned since the purchase and transfer of their said property in the month of September, 1945.

5. Defendants further state that said restrictive agree- [fol. 13] ment is and was void and of no effect for the following reasons, to-wit:

(a) Said agreement is contrary to the provisions of section 42 of title 8 of the United States code, which said section reads as follows:

> "Section 42. Property rights of citizens. All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

(b) That all of the defendants are citizens of the United States and entitled to enjoy the above rights in reference to the ownership of real property in Missouri as set forth in said section; that there is no statutory law in Missouri in any manner restricting the sale of real property to white citizens, and that no court in Missouri has ever decided a case in which the right to own or use real property as a place of residence has ever been denied to white citizens of this state by reason of any provision in any private contract, or otherwise, but that the free uses of property as homes are accorded to all white citizens in this state, and said rights are upheld by the courts in this state save only as to restrictions regulating the location and character of buildings, and the uses thereof, such as conducting rooming houses, slaughter houses, soap factories, distilleries, livery stables, tanneries, machine shops, liquor saloons, and the like, and that said restrictions have always been enforced by the courts of Missouri against all owners and tenants of property so restricted, without regard to race or color.

6. Defendants further state that said restrictive agreement is void because it violates rights conferred on these defendants by section 41 of title 8 of the United States code, which said section provides, in part, as follows:

> [fol. 14] "Section 41. Equal rights under the law. All persons within the jurisdiction of the United States

shall have the same right in every state and territory to make and enforce contracts, . . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

Defendants further state that said restrictive contract is contrary to the provisions of said section 41, and deprives these defendants of the right to make and enforce contracts which the white citizens in Missouri enjoy, and to the protection of laws regarding the ownership and use of property which white citizens of this state have applied to similar transactions; that said restrictive contract, if enforced and upheld, will abridge the rights of the defendant Josephine Fitzgerald which are enjoyed by other white citizens of Missouri with regard to the making and enforcing of contracts and the full and equal benefit of all laws and proceedings for the security of property as is enjoyed in this state by other members of her race.

7. That said restrictive agreement is void because the same is contrary to the provisions of section 1 of the 14th amendment to the constitution of the United States, as declared by the federal court in Gandolfa v. Hartman, 49 Fed. 181, which said case has never been overruled; and is contrary to Section 10 of the bill of rights as contained in the constitution of Missouri, article 1, section 10.

7a. That said restrictive agreement is void for the reason that the description of the property mentioned therein [fol. 15] is defective and so indefinite that it does not enable the defendants and others, not parties to said agreement, to know what property is attempted to be restricted thereby, and fails to impart any notice to these defendants.

8. Defendants further state that the plaintiffs seek action by the state of Missouri in this cause by asking the courts of this state to enforce a contract which is contrary to the provisions of the statutes and constitutional provisions aforesaid; that, if this court upholds and enforces said restrictive agreement, its action will constitute state action, contrary to the provisions of section 1 of the 14th amendment to the constitution of the United States, which forbids

any state to enforce any law which shall abridge the privileges or immunities of citizens of the United States, and forbids any state to deprive any person of life, liberty, or property, without due process of law, or the denial to any person within the jurisdiction of a state the equal protection of the laws; that the court upholding an enforcement of said restrictive agreement by this will deprive these defendants of their said property without due process of law, and will deny to them the equal protection of the laws, within the meaning of said 14th amendment, and of said article 10 of the constitution of Missouri, by action of the state of Missouri.

9. Defendants further state that, according to the records of the recorder of deeds of the City of St. Louis, said restrictive agreement was entered into and placed of record on the 17th day of February, 1911; that, notwithstanding the existence of said agreement, members of the Negro race have owned and occupied as residences lots or parcels of property located in said city blocks covered by said agreement, including the property next door to that owned and occupied by the defendants J. D. and Ethel Lee Shelley, for a period of more than 15 years; that some of said homes so owned and occupied by members of the Negro race were [fol. 16] built by them for that purpose; that all of said occupancy by said members of the Negro race began long after said restrictions were placed on file, and that said ownership and occupancy by said Negroes have been open, notorious and known to the plaintiffs herein and to the other signers, their assigns and successors in ownership of property covered by said restrictions; that neither these plaintiffs, nor any of the other signers of said restrictive agreement, nor their assigns, personal representatives, or successors, have ever taken any steps to prevent said occupancy and ownership of property covered by said agreement and located in said city blocks, particularly in the city block where the property transferred by and to these defendants is located, although well knowing that said agreement was being violated by signers thereof, or their assigns and successors; that said conduct, and lack of action to prevent said occupancy by Negroes on the part of these plaintiffs and others privy to said restrictive agreement, constitutes a waiver of the same by reason whereof said agreement has now become without force and effect and

a court of equity is without authority to enforce the same on account of said waiver by these plaintiffs and others.

10. Defendants further state that these plaintiffs have been guilty of laches, in that they have stood by for a long period of time, either themselves or their predecessors in ownership of parcels of property which they now claim to own, and kept silent and refrained from asserting whatever rights, if any, they may have had under the terms of said restrictive agreement to prevent Negroes from owning and occupying property covered by said restrictive agreement, although knowning that said agreement was being violated continuously for many years, to-wit; fifteen years.

11. Defendants further state that said restrictive agreement pleaded in plaintiffs' petition is also void, because it violates the rule against perpetuities, in that it prohibits the unrestricted sale of property to a class of citizens of the [fol. 17] United States for a period of fifty years, and prohibits the transfer of the same to any member of the Negro or Mongolian race for said period of time, or occupancy by any member of said races during said period, all without providing any means of or for the unrestricted sale to or occupancy by any member of said races, save by the unanimous written and acknowledged consent of the signers or their assigns or successors. That said agreement is an unreasonable restriction against the right to alien real property, and works a hardship on the owners thereof and tends to keep the same out of commercial channels for a longer period of time than the law allows.

12. Defendants further state that by its decision in the case of Gandolfo v. Hartman, 49 Fed. 181, decided in 1892, the federal court declared that a provision in a deed which provided that the land conveyed therein should never be rented to a Chinaman, was void because it was contrary to the 14th amendment to the constitution of the United States, and further ruled:

> "Any result inhibited by the constitution can no more be accomplished by contract of individual citizens then by legislation, and the courts should no more enforce the one then the other."

Defendants further state that said decision has never been specifically overruled; that said decision was rendered nearly a decade after the civil rights cases (100 U. S. 3), wherein it was established and held that the provisions of the 14th amendment to the constitution was protection against governmental action, and not against individuals in a private capacity; that the United States Supreme Court, in the case of Buchanan v. Warley (245 U. S. 60), decided in 1917, cited and applied sections 41 and 42 of title 8 of the United States code, hereinbefore set out, to state action by a legislative body thereof, to-wit, an ordinance passed by the council of the City of Louisville, Kentucky, and held said ordinance void because it prohibited Negroes [fol. 18] from living in property located in certain sections of said city; that since said decision the use of restrictive covenants in deeds and restrictive agreements, similar to the one pleaded by the plaintiffs herein, have been resorted to more frequently, and have now become the sole and oft-used method by which to accomplish that which the court said could not be done by legislation; that, by means of said method of restrictive covenants and agreements, ghettos have been created in nearly all of the cities in certain states of the union, particularly in the state of Missouri and the City of St. Louis, thereby restricting Negro citizens to a limited area for homes and housing purposes, with the results hereinafter set forth.

13. That the Negro population in St. Louis has grown from 40,000 in 1910 to more than 117,000 at the present time, and that of this increase more than 15,000 took place between the taking of the United States census in 1930 and 1940, and that this rate has been equalled or exceeded in the years since the 1940 census. That despite this large increase in the Negro population of the City of St. Louis, the area which Negroes may live in without occupying property which has been restricted against them by deed or by agreements similar to the one pleaded by the plaintiffs herein has been enlarged very little; that, by means of said restrictions, the portions of this City of St. Louis occupied by Negroes have been narrowed, surrounded and circumscribed almost completely, and that by increasing business areas and the condemnation of lands by the City of St. Louis for purposes of widening streets and beautifying the city and building public institutions, this restricted area or ghetto

has become much smaller, and Negro families are compelled to move in together, three or more of them in quarters ordinarily housing one family; that this congested condition has been aggravated by reason of the influx of war workers during the last 3 years; that, due to this overcrowding, disease, crime and juvenile delinquency, the death rate among Negroes, and fire hazards, have all greatly in-
[fol. 19] creased, and the health and safety of other portions of said city have been endangered; that another result of the creation and limiting of Negroes to homes in said ghettos is to increase the rental which they pay far beyond that paid by the average city dweller for even better housing accommodations, and Negroes are compelled to pay much higher prices for the property they buy to live in than white citizens pay for the same or better housing property. That the aforesaid conditions in St. Louis are an integral part of the living conditions and hardships imposed on Negroes in many parts of the United States, particularly in the City of St. Louis and in the State of Missouri, and that said restrictive covenants and agreements are the means by which said conditions have been brought about and are being aggravated, contrary to the provisions of the statutes and constitution set out herein and pleaded, and that the courts should afford relief from said conditions under their powers in equity.

14. Defendants further state that no court of appellate jurisdiction in Missouri has ever passed upon, or had before it for consideration, sections 41 and 42 of title 8 of the United States code above set forth.

15. Defendants further state that, by reason of the occupancy of property as homes by Negroes in the said city blocks covered by said restrictions for a period of at least 15 years prior to the purchase of said property by the defendants, Shelley, it has now become impossible to enforce said restrictive agreement so as to effectuate its purpose, to-wit, to keep said blocks free from occupancy by Negroes, or their ownership, and to preserve them for dwelling places for white people or people of Caucasian blood; that, in addition to the foregoing occupancy, said blocks have now been surrounded almost completely by Negro home owners and tenants, so that the neighborhood has completely changed in the last few years; that to enforce said restrictive agreement would not in any way accomplish the purpose

of the plaintiffs herein, but would work a hardship on these [fol. 20] defendants and other Negroes seeking places in which to live, and would prohibit present owners who can find no other buyers for their said property than members of the Negro race from disposing of the same while they may take a profit, or receive a fair value for the same.

15. Defendants further state that it is the settled law of Missouri that contracts made in violation of a valid statute or law, or which required the violation of such laws in their fulfillment, are void, and will not be enforced by the courts of this state; and defendants hereby invoke the application of said doctrine and settled rule of law to the facts of this case. That it is also the well-settled rule of decision in this state that cases decided by the courts of Missouri, or by other tribunals, which did not have before them for consideration a statute or other law at the time of making a ruling or deciding a cause, are not precedents to be followed by the courts when passing upon said statutes in a case where they are properly pleaded and are at issue therein; and the defendants hereby invoke that rule of decision in this case.

16. Defendants further state that the plaintiffs do not come into court with clean hands.

17. Defendants deny each and every allegation in plaintiffs' petition not hereinbefore specifically admitted.

Wherefore, having made a complete and full return to the order to show cause issued herein, and having made answer to the plaintiffs, defendants pray that the court will declare said restrictive agreement to be null and void and contrary to law; that the court will declare the same to have been waived by the plaintiffs by reason of their said failure to act, and their said laches, over a period of many years; that plaintiffs be estopped to assert the existence and effect of said agreement by reason of their said failure to act; and that the petition of the plaintiffs may be dismissed and for naught held, and that defendants may go hence without day, and recover their costs.

[fol. 21] IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

MINUTE ENTRIES OF ARGUMENT

On October 18, 1945, this cause coming on for *hearing on* the *order to show cause* why a temporary injunction should not be granted, come the parties hereto by their respective attorneys; thereupon the hearing on the order to show cause progressed before the Court upon the order to show cause, upon the defendants' return to the order to show cause and upon the evidence and proof adduced, and said hearing not being terminated, it is ordered by the Court that the further hearing of the order to show cause be laid over until tomorrow, Friday, October 19th, 1945, at 10 o'clock a.m.

It is further ordered by the Court that the restraining order heretofore made and issued herein remain in full force and effect in the meantime.

On October 19th, 1945, the order to show cause herein coming on for *further hearing*, come again the parties hereto, by their respective attorneys; thereupon the further hearing on the order to show cause resumed and progressed before the Court and not being terminated, it is ordered by the Court that the further hearing be laid over until Monday, October 22nd, 1945, at 10 o'clock a.m.

It is further ordered by the Court that the restraining order heretofore made and issued herein remain in full force and effect in the meantime.

On Friday, October 19, 1945, it is ordered by the Court that the hearing on this cause on its merits be set for Thursday, November 1st, 1945, at 10 o'clock a.m.

On Monday, October 22, 1945, the order to show cause coming on for further hearing, come again the parties hereto, by their respective attorneys, thereupon the further *hearing* on the order to show cause resumed and progressed before the Court and being *terminated*, the same is submitted to the Court and the Court having heard and duly considered the same, but not now being sufficiently advised of and concerning the premises, takes time to consider thereof.

[fol. 22] It is ordered by the Court that the restraining order heretofore made and issued herein remain in full force and effect in the meantime.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STIPULATION AS TO EXHIBITS ACCOMPANYING, AND TESTIMONY IN, THE TRANSCRIPT OF RECORD

Counsel for the parties plaintiffs and defendants agree that

(1) Plaintiffs' exhibit A, the covenant at issue which was admitted in evidence over defendants' objection that it contravened section 41, title 8, United States code, is the only exhibit necessary to accompany this record, all other exhibits being sufficiently covered by stipulation of facts at pp. 1-4 hereof; therefore they stipulate it shall be the only exhibit set forth herein.

(2) The testimony of the following 10 witnesses is not essential to a determination of the issues on appeal; therefore they stipulate such testimony shall not be transcribed:

Bowers, Eli	(show cause)
Burdzy, M. A.	(show cause)
Bush, James T.	(show cause; Merits)
Fitzgerald, Josephine	(show cause)
Hackmann, Lucille	(show cause)
McCullough, Charles P.	(show cause)
Neumann, Charles P.	(show cause)
Paulos, Oscar	(show cause)
Seegers, G. L.	(show cause; merits)
Weathers, Frank A.	(merits)

3. The Court nisi prius having considered the evidence offered at the hearing on the order to show cause together with the evidence at the hearing on the merits, they stipulate that the evidence at both hearings, subject to paragraph (2) [fol. 23] next preceding, is before the appellate court.

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

Statement of Evidence

On October 18, 1945, before the Honorable Wm. K. Koerner presiding as judge in division 3 of the aforesaid Circuit Court, in equity sitting, the following proceedings were had

on the order to show cause why temporary injunction should not issue.

APPEARANCES

For Plaintiffs ..... Gerald L. Seegers, Esq.
For Defendants ..... George L. Vaughn, Esq.

PLAINTIFFS' EVIDENCE

OFFER IN EVIDENCE

Mr. Seegers: I would like to offer in evidence recorder of deeds' book number 2400, and more particularly page 488, on which appears the recorded covenant or restriction agreement referred to in this case; and because there is no original of this in existence that we know of, I would like to read this into the record so we can, for once and all——

The Court: Have you a copy of it?

Mr. Seegers: Yes, your Honor.

The Court: All right. Read it into the record, and let me have the copy.

(Counsel agree that the wording only of the restriction agreement, omitting signatures, notary's acknowledgment and recorder of deeds' entry, shall be set forth in this transcript of the record. It follows.)

"This contract of restrictions made and entered into by the undersigned, the owners of the property fronting on Labadie Avenue in Blocks 3710-B and 3711-B between Cora Avenue on the West and Taylor Avenue on the East, Witnesseth: That for and in consideration of one dollar and [fol. 24] other valuable considerations paid by the undersigned, one to the other, the receipt of which is hereby acknowledged, each and every one of the undersigned persons hereby contract and agree with the other and for the benefit of all to place, and do place and make upon the Real Estate fronting on Labadie Avenue and running back to the alley on the North and South sides of Labadie Avenue, between Taylor Avenue and Cora Avenue, a restriction, which is to run with the title of said property in favor of each and every one of the undersigned parties, and their assigns and legal representatives and successors as the owners of this property, which shall not be removed except by the consent of all of the property owners by some instrument or Deed, made and Executed and put of record,

the said property is hereby restricted to the use and occupancy for the term of Fifty (50) years from this date, so that it shall be a condition all the time and whether recited and referred to as not in subsequent conveyances and shall attach to the land as a condition precedent to the sale of the same, that hereafter no part of said property or any portion thereof shall be, for said term of Fifty-years, occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property for said period of time against the occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian Race. It is further contracted and agreed that upon a violation of this restriction either one or all of the parties to this agreement shall be permitted and authorized to bring suit or suits at law or in equity to enforce this restriction as to the use and occupancy of said property in any Court or Courts and to forfeit the title to any lot or portion of lot that may be used in violation of this Restriction for the benefit of each and every person that may now or hereafter, after the recording of this restriction, become the owner of any property on said street. To have and to hold each to the [fol. 25] other their said property, subject, however, always and under all conditions to the terms of this restriction, each warranting to the other the compliance in every respect of the above restrictions. In Testimony whereof, the parties hereto have signed their name and seal this the 16th day of February, 1911."

[fol. 26] MATILDA SOHLMANN, sworn, on direct examination by Mr. Seegers in behalf of plaintiffs, testifies.

Q. Will you state your name, please?

A. Mathilda Sohlmann.

Q. Mrs. Sohlmann, did you, prior to May, 1945, own the property located at 4600 Labadie?

A. Yes.

Q. Did you sell the property at that time?

A. I sold that the 30th of May.

Q. This year?

A. Yes.

Q. To whom did you sell it?

A. To Burns; Mr. Sleeter sold it for me. Mr. Sleeter was my agent; he sold it.

(Objection; the record is the best evidence.)

The Court: She can testify as to her own property, whether she owned a piece of property or not. When she says she sold, it doesn't mean she conveyed it. Passing of title must be proved by the record.

Mr. Vaughn: Does your Honor rule her testimony that she sold it is the best evidence?

The Court: I rule it is competent evidence as to her own ownership of her own property.

Mr. Vaughn: That is our objection.

The Court: Very well; overruled. This is the property at 4600 Labadie?

Mr. Seegers: That is the defendants' property; the now defendants' now property, the subject of plaintiffs' equitable action.

The Court: All right. This lady owned it prior to what date?

Mr. Seegers: Prior to May 18, 1945.

The Court: Very well.

Q. And you say you sold it through the Slattery Real Estate Company?

A. Yes, sir.

Mr. Vaughn: Move to strike that, your Honor, as not being the best evidence.

[fol. 27] The Court: Well, sold it; she don't say who she sold it to. You will have to show the transfer, if there is one.

Mr. Seegers: Well, it has no purpose to show the transfer, to whom; I am not interested in that.

The Court: Very well; proceed, if it is preliminary to something else. Overruled.

Mr. Vaughn: I didn't understand your Honor's ruling.

The Court: I say the objection will be overruled since, as I understand it, this is not an attempt to show a transfer of title; merely to show this lady moved out of the premises at that time.

Mr. Seegers: And divested herself of her interest.

The Court: Oh no, no.

Mr. Seegers: Well, she doesn't own it any more.

The Court: Objection will be sustained if that is your purpose.

Mr. Seegers: All right.

Mr. Vaughn: Move to strike it from the record.

The Court: Sustained.

Q. At the time you owned the property, Mrs. Sohlmann, did you know there was a restriction agreement?

A. Oh yes; I knew.

Mr. Vaughn: Just a moment.

A. I was——

Mr. Vaughn: Just a moment, please. Same objection, whether she knew or not.

The Court: Overruled.

Q. You knew there was a restriction agreement covering your property?

A. Yes, sir; I know, at the time I attended meetings, and I had chances to sell it to colored people but I refused.

Mr. Vaughn: Move to strike it out as not responsive.

The Court: Very well; sustained. The only point that is material is, did she know of the restrictions.

Mr. Seegers: That's all.

[fol. 28] Cross-examination.

By Mr. Vaughn:

Q. When did you cease to live at 4600 Labadie?

A. I never lived in; that was always I had tenants, my own tenants, Mrs. Edring; they lived upstairs, her husband and she.

Q. You never lived out there?

A. No; I never lived in it, No.

Q. Did you ever have any property in that block?

A. No, I never had no troubles.

Q. I say, property: did you have any property in that block?

A. No, not in that block; that was 4600 even, the only.

Q. Were you acquainted with any of the tenants who owned the, occupied the property on either side of this 4600?

A. No; they come on my——

Mr. Seegers: I object to that as immaterial.

A. —door, but I refused to do it all the time.

The Court: The objection will be overruled.

Q. Yes; the question I asked you, madam, was if you knew any of the other tenants who lived in property adjoining you, or close to yours, or either side of you.

The Court: Did you know any people lived along the street there?

A. I just know my tenants and what's to us, the second neighbor.

The Court: Just your tenants and the next neighbor to them?

A. They are all colored people, but I never know the name of them. I think Yeager is the name.

Questions by the Court:

Q. Where did they live?

A. Next to mine.

Q. On Labadie avenue?

A. Yes, sir.

Q. Next to your property?

A. Yes, sir.

Q. Your property was 4600 Labadie?

A. Yes, sir.

Q. How long did the Yaegers live there?

A. All the time since I bought it, and I am 1927.

Q. The Yaegers were colored people?

A. Colored people.

[fol. 29] Q. And they lived there since 1927?

A. Yes, sir.

Q. Any other colored people live along that block, do you know?

A. There was living one house in between, but I never knowed them because I ain't lived there. I just had tenants, and one of the tenants, is her husband, too.

Q. You mean the Yaegers, and there was another colored family lived in the same block?

A. Oh yes; but they moved out lately now.

Q. How long were they there?

A. That's quite a while; Mrs. Edering, maybe she knows them better because 7 years she is my tenants, and she is present here.

The Court: That's all I care to ask.

Mr. Vaughn resumes.

Q. Madam, did you know a colored woman living in the block named Sarah Young, who worked for the juvenile Court?

A. Why, that's my neighbor, I guess, see; I mentioned the next door neighbor.

The Court: I thought she said Yeager; or did I misunderstand her?

A. Yaeger.

Q. I am asking you now about Mrs. Sarah Young, and colored people.

A. Young; oh, I guess Young, not Yaeger; Young.

Q. She lived there; and you knew she lived there?

A. Yes, I know she lived there.

Q. And about how long did you know she lived there near your property?

A. Well, I guess she moved in next year when I bought, I guess.

Q. I will ask you, madam, if you ever brought any suit to oust her or any other colored people who lived in that block.

A. No, what I never done; I always had trouble not to rent.

The Court: Are the Yeagers still living there?

A. Not Yaeger; I think Youngs.

The Court: Young; are they still living there?

A. Yes.

[fol. 30] Mr. Vaughn: That's all.

William Wnukowski sworn on direct examination by Mr. Seegers in behalf of plaintiffs, testifies.

Q. Will you state your name, please?

A. William Wnukowski.

Q. And where do you live, sir?

A. 4603 Labadie avenue.

Q. With respect to 4600 Labadie avenue, sir, where is your home located?

A. Direct across the street.

Q. Do you own the property in which you live?

A. Yes, sir.

Q. How long have you owned it?

A. 21 years the past August.

Q. Have you lived there in that house all of that time?

A. Yes, sir.

Q. Are you familiar with the other residences in that block?

A. Yes, sir.

Q. And the happenings that have taken place in that block during the period you have lived there?

A. Yes, sir.

Q. To your knowledge, how many negro families now reside in that block?

A. Right now there's three that I know of.

Q. Does that include or exclude the Shelleys, the defendants in this case who moved into 4600 Labadie?

A. Well, no; that doesn't include them.

Q. There are 3 other Negro families in addition to the Shelleys?

A. Yes, sir.

Q. Have any of those families to whom you have referred moved in there within the last 21 years?

A. No, sir.

Q. There have been no Negro families moved into that block within 21 years?

A. No, sir.

Mr. Seegers: That's all.

[fol. 31] Cross-examination.

By Mr. Vaughn.

Q. Just a moment. Are you acquainted with the property at 4608 Labadie?

A. 4608.

Q. Yes, sir?

A. No; I am not acquainted with that. That's across the street, on the even side.

Q. Across the street from you; that's across the street from you, isn't it?

A. Yes, sir.

Q. And on the even side?

A. What's that?

Q. On the even numbered side; the houses on that side are even numbered?

A. Yes, sir.

Q. Now, if you were to draw a line directly from your door on the north side of this street,—that's where you live, isn't it?

A. Yes, sir.

Q. If you were to draw a line from your door straight across to the south side of the street, what property number would you strike on the south side?

A. Right from the numbers, they divide right there, from 4500 to 4600, and they jump.

Q. Well, can you tell me what 'phone (house) number you would strike on the south side?

A. I couldn't even tell you that.

Q. Well, who lives directly in front of you?

A. Direct in front, in me?

Q. Yes, sir.

A. I don't know the people.

Q. Are they colored or white?

A. They are colored live at 4600.

Q. That's what I say; right across the street.

A. They weren't in there before, but they just moved in there recently.

The Court: You are talking about 4600 now. He is talking about your client's number now.

Q. Well, do you know where 4608 is?

A. That's across the street, too.

Q. That's across the street, and it's kind of diagonally across the street from you, isn't it?

A. Yes.

Q. Do you know the people who live there?

[fol. 32] A. No, I don't know the people around the neighborhood at all. Very few people I know.

Q. You know those are colored people, don't you?

A. There are 3 families colored people live there.

Q. And these people moved there a few years ago?

A. I been going out and coming back from town, but I never did see them in there.

Q. The people who live at 4610, that's also diagonally across the street from you, isn't it?

A. Tell the truth, I don't know the neighbors there either. I know the colored people through the neighborhood there; when it comes to numbers I don't pay attention, but I know the three colored families across the street.

Q. For how many years have you been seeing colored people live in the block across from there?

A. When we bought that property there it was supposed to be restricted; we never knew there was colored people living in that block.

Mr. Vaughn: Move to strike, your Honor.

The Court: Sustained.

Q. For how many years have you seen colored people across the street from there?

A. As long as we lived there.

Q. How many families?

A. 3.

Q. How many moved out?

A. I seen one.

Q. Seen 3 colored people move in that place?

A. No; white people moved in there.

Q. I will ask you if it isn't a fact that colored people built a house in that block.

A. No; I don't know, that must have been before my time.

Q. Now, within the last 10 years don't you know, Mr. Witness, about 10 years ago a colored woman built a house there and that has been occupied by two or three people, and a man named Amos Higgins now lived there?

A. I don't know that.

Q. You wouldn't say it wasn't true, would you?

A. I can't say it was true; I don't know who built it.

[fol. 33] Q. And colored people live there?

A. Colored people lives there; I don't now who built it.

Q. Let me ask you if you ever brought a suit to restrain colored people that used them, to prevent them from living in your block.

Mr. Seegers: I object to that; there is no showing any of the houses to which counsel generally refers are numbers or properties signed up in this restrictive covenant. Until there is such a showing, evidence whether anybody, or not, brought a suit to remove colored people from houses on that block is not material.

The Court: Objection will be overruled.

Questions by the Court.

Q. How about this 4600; how long have colored people lived at 4600?

A. Well, I really don't know because, the way I understand, they moved in from the rear.

Q. Well, have any white people lived at 4600 within your recollection?

A. Yes, sir.

Q. How long ago, to the best of your recollection?

A. About 2 weeks ago.

Q. White people lived there until 2 weeks ago?

A. Yes, sir.

Q. At 4600?

A. Yes, sir.

The Court: All right; you proceed, now.

Mr. Vaughn Resumes Cross-examination.

Q. The block you live in you say is restricted?

A. Yes, sir.

Q. That is on the north side of the street?

A. Yes, sir.

Q. And you live between Taylor avenue on the east and Cora avenue on the west?

A. Yes, sir.

Q. And this block where these houses are, 4600 Labadie and 4608 and 4610, those houses are on the south side of *the south side of* the street, aren't they?

A. I don't hear you; I am hard of hearing.

[fol. 34] Q. Well, I say 4600, 4608, 4610 and these other houses where colored people live that you have seen living there ever since you have been there, or for some time, are on the south side of the street, aren't they?

A. Yes, sir.

Q. And they live between Taylor avenue on the east and Cora avenue on the west?

A. Yes, sir.

Q. I ask you again as I don't recall that you answered, if you yourself, by yourself or in company with anyone else, have ever brought a suit or action of any kind to prevent colored people from moving into or living in the property there on your side of the street, or on the south side of the street between Taylor avenue and Evans avenue.

Mr. Seegers: I object to that for the reason previously stated: that unless there is showing in evidence that property not specifically mentioned or described by counsel in his question is shown to be included in the covenant, it is inadmissible; secondly, that the witness has already testified to his knowledge there have been no colored families moved into the block, and that during his entire period of ownership of property in that block no colored families have moved in with the exception of 2 weeks ago.

The Court: The objection will be overruled. There's very little evidence that's incompetent in cases of this kind, because the matter is in the discretion of the Court. Overruled.

Mr. Vaugh: Your Honor, it is competent for this purpose; it is competent hereto show, if we may show by this witness, that there are lots in those blocks on either side of the street that are not restricted, where they may be sold to and occupied by colored people; then that goes to render——

The Court: His testimony, of course, doesn't show that. It merely shows they didn't file suit.

Mr. Vaughn: That's what I asked him.

The Court: That doesn't tend to prove the lots were restricted or were not restricted. The objection will be overruled.

Q. Will you please answer that question?

[fol. 35] The Court: He asked whether you ever filed a suit, you yourself or in connection with anybody else ever filed a suit to put any colored people out.

A. No, sir.

The Court: Or prevent any colored people from coming in.

A. No, sir.

Q. What time in the morning do you go to work?

A. I go to work at about 10 minutes after 6, or a quarter after 6.

Q. And what time do you get home?

A. I get home some time after 6:30 or so, a quarter to 7.

Q. Now, summer time when you came home, during this last summer and summer before last it was still light a good, long time, wasn't it?

A. Yes, sir.

Q. Didn't you ever see, during last summer and summer before last, colored people living at 4608 Labadie avenue, across the street from you?

A. Well, the people there and children running up and down the sidewalk, I didn't know exactly where they lived.

Q. There were colored children——

A. Yes.

Q. —running up and down the sidewalk?

A. Yes. I didn't know exactly what family they were.

Mr. Vaughn: That's all.

Redirect examination.

By Mr. Seegers:

Q. Mr. Witness, this Labadie avenue between Taylor and Cora, is that a continuous block or is there a corner between in there?

A. No; it's a continuous block.

Q. It's a continuous block; there's no corner between Cora and Taylor——

A. No, sir.

Q. —on either side of Labadie?

A. No, sir.

Q. This 4600 Labadie isn't a corner lot?

A. No, sir.

Mr. Seegers: That's all.

[fol. 36] Emil Koob, on direct examination by Mr. Seegers in behalf of plaintiffs, testifies.

Q. Will you state your name, please?

A. Emil Koob.

Q. And where do you live?

A. 4935 Cote Brilliante.

Q. In what business or profession are you engaged?

A. Retail baking.

Q. And where is that located?

A. North St. Louis; 2823 Marcus.

Q. How long has your bakery been located at that address?

A. The building has been located there since 1902.

Q. And how long has the bakery business been conducted there under the name Koob Bakery?

A. Since the turn of the century.

Q. Will you give the date, please?

A. 1900.

Q. And how long have you lived at your present address?

A. My present address, I have lived there for 8 years.

Q. With respect to the location of your bakery, what distance are you from 4600 Labadie?

A. 4600 Labadie; Marcus avenue is the 4700 intersection, and the bakery is a lot removed from St. Louis avenue, which is a block from Labadie; would make it approximately a block and a half.

Q. The bakery is in the middle of the block?

A. The bakery is just one lot removed from the corner of St. Louis avenue.

Q. So you are one block and one lot removed from Labadie avenue, and one block west of 4600?

A. That's right.

Q. Are you connected with any improvement association in that neighborhood, Mr. Koob?

A. Yes, I am.

Q. What's the name of it?

A. The Marcus Improvement Association.

Q. The Marcus Avenue Improvement Association?

A. The Marcus Avenue Improvement Association.

A. What position, if any, do you hold in that organization?

A. At the moment I happen to be the chairman; president of the board.

Q. How long have you been president?

A. 2 years; 2 years and a half.

Q. How long have you been connected with the organiza-
[fol. 37] tion as a member?

A. I have been connected with the organization for some 20 odd years.

Q. During the periods during which you have been a member of that organization have you interested yourself in the immediate neighborhood?

A. Yes; very much so.

Mr. Vaughn: What immediate neighborhood?

The Court: Be more definite about it.

Q. What are the bounds of the district covered by this Marcus Avenue Improvement Association; can you recite them?

A. Yes. The northern boundary is Natural Bridge, and has an expanse——

Q. What hundred north is that, do you know?

A. Natural Bridge, I think it's 3400; I am not——

Q. What are the other boundaries?

A. It may be 35. And the other boundaries, the northern boundary is Natural Bridge road, and the expanse on that particular street is Newstead to Kingshighway; that's the picture, probably better portray that by giving the picture that way. And then we go south on Kingshighway to Maffitt place.

Q. How far south is that in numbers, do you know?

A. Maffitt avenue is 2800 north; and then we go east on Maffitt avenue to Taylor avenue.

Q. What hundred east is that?

A. That's 2500 east.

Q. That's 4500 west; and——

A. And then we turn to the north on Newstead, and direct our course on Newstead and take Newstead on over to Natural Bridge on the west side, and take in that entire territory.

Q. Now, during the 25 years you have been a member of the Marcus Avenue Association have you been interested in that territory?

A. Oh, yes.

Mr. Vaughn: If the Court please, I don't see the purpose or the relevancy of this testimony. This is far removed from the property in question.

The Court: We will have to see what the relevancy is.

Mr. Seegers: This is preliminary.

The Court: Merely preliminary.

[fol. 38] What was your answer to that question, Mr. Koob?

The Court: He said yes.

A. Yes.

Q. Have you made it your point, or your avocation to watch the development of property within that district?

Mr. Vaughn: Just a minute.

A. Yes.

Mr. Vaughn: Object to that as leading, your Honor.

The Court: Overruled.

Q. Your answer is what?

A. I have made an intense study over a period of years.

Q. Has that study included the immediate neighborhood in which Labadie avenue is located?

A. Yes; very definitely.

The Court: Is this in the district here?

A. Yes, your Honor.

Q. Have you familiarized yourself in that 25 years with the property in the 4500 and 4600 block of Labadie avenue?

A. Yes.

Q. Have you paid any attention to the state of the property in this territory, and particularly the 46- and 4500 blocks of Labadie, as to whether or not the property there is occupied by negroes or white people?

A. Yes; I have been.

Q. Mr. Koob, are there any negroes living in the 4500 block of Labadie avenue, in the block numbered 4500?

A. I believe there's one.

Q. There's one?

A. I believe so.

Q. How long has that person, that negro person or family lived in that block?

A. To the best of my knowledge, some 23 years.

Q. Are there any negro families residing at the present time in the 4600 numbered portion of Labadie avenue?

A. Yes.

Q. How many?

A. In the 4600, including the new occupants?

Q. The defendants Shelley?

A. Yes.

[fol. 39] Q. Yes; include them.

Mr. Vaughn: Let's exclude them.

A. There are 2 or 3 families; besides Shelleys, I think there are two.

Q. Do you know the numbers of the houses in which those 2 colored families reside?

A. Yes; well, 4608, and I think it's 4610.

Q. How long——

Mr. Vaughn: Just a minute.

The Court: Have you completed your answer, sir?

A. I can't give you the accurate house numbers here; I know that the 4608 property—if the Court please, can I elaborate on that?

The Court: Certainly.

Q. I am familiar with the 4608 property, together with the 4610, and likewise 4606 which has been occupied by negroes over a great—over a period of years as long as I can remember.

Q. These 3 houses?

A. That's right.

The Court: 3 families besides the defendants?

A. Well, recently there was a foreclosure in the 4606 piece.

The Court: Never mind that.

A. That is occupied by whites; it is not occupied by negroes.

The Court: Which one?

A. 4608.

Q. By whom is it occupied now?

A. It is occupied by whites.

Q. Now?

A. Yes.

Q. So, excluding the Shelleys, there are 2 negro families living——

A. 3. I am not sure about that, see?

Q. Wait 'til I finish. How many negro families are now residing, excluding the Shelleys, in the 4600 numbers of Labadie avenue?

A. Excluding them?

Q. Excluding the Shelleys.

A. 2.

Q. With the Shelleys, how many now reside in the 4600 properties of Labadie avenue?

A. 3 with the Shelleys.

Q. Can you tell the addresses of the other 2, excluding the [fol. 40] Shelleys, on Labadie avenue in which now negroes now reside?

A. For me to be specific, or rather accurate in saying 4608 or -10, I could stand to be corrected on those addresses. In 4608, the property there was originally in the hands of people by the name of Boxley; I knew the children——

The Court: Just answer the question, if you are certain about the addresses, just say so; if not, say that.

Q. Yes; with respect to people, now, and starting from the house number 4600 Labadie, how many houses intervene, if any, between 4600 Labadie and the first house there occupied by Negroes?

A. 2 or 3.

Q. Now, let's get this straight. 4600 Labadie is the house in which the Shelleys reside?

A. That's right.

Q. You say that, you previously testified that 4604 was formerly occupied by Negroes, but is now occupied by whites?

A. 4606.

Q. 4606. How many houses interpose, if you know, between 4600 and 4606?

A. Well, taking them from the amount, property addresses, 4600, 4602, 4604; I am assuming——

Q. You don't know?

A. That's right.

Q. Do you know how many houses removed from 4600 is the first house occupied by a Negro family?

The Court: He just said he didn't know.

A. Three houses.

Q. Three houses; you know that for a fact, Mr. Koob.

The Court: Do you assume that or do you know it, sir?

A. I know it.

Q. Do you know when, Mr. Koob, the two properties which you have referred to as 4608 and 4610 Labadie, when they first became occupied by Negroes?

A. 4608?

Q. And -10.

A. Well, I got this by the——

The Court: Just answer, won't you, please sir; the best you can.

A. The 4608 property was occupied by Negroes——

Mr. Vaughn: Just a minute.

[fol. 41] A. —since 18-- ——

Mr. Vaughn: Just a minute. I want to make an objection. I object as not responsive.

Q. I asked you, Mr. Koob, if you knew at what time Negro families first occupied the properties now known as 4608 and 4610.

The Court: Do you know that's the question?

A. Yes.

Q. With respect to 4608, when was it first occupied by Negroes?

A. 4608 was first occupied by Negroes in 1882.

Q. Now, with respect to 4610, do you know?

A. I do not.

Q. How long can you remember back with respect to Negro occupancy of 4610?

A. As long as I can remember.

Q. How long in years?

A. 30 years.

Q. 30 years. Were there Negroes living in that particular spot 30 years ago?

A. The best of my knowledge.

Q. Do you remember it that way?

A. Now——

The Court: Just answer: is that the best of your recollection?

A. That's right. I would like to enlarge upon this.

The Court: Well, we don't want to get too much talk in the answer. When he asks you certain questions try to answer them, if you can.

Q. With respect to 4608 Labadie, do you know from your research and study how that come into the hands of Negroes in 1882?

Mr. Vaughn: If the Court please, I don't think that's competent. It calls for a conclusion on his research and study.

The Court: Well, find out the basis for his answer after he gives it.

Mr. Seegers: I thought I showed he was an expert with respect to occupancy by white or coloreds in this district.

The Court: Overruled. You may state how, if you know of your own knowledge.

A. This particular piece of property was run down——

[fol. 42] Mr. Vaughn: If the Court please, may he answer yes or no? He hasn't answered the question.

A. I say yes.

The Court: All right. Testify, now, only from your own knowledge, now.

A. Not from hearsay. That's difficult; I have some research back in——

Q. Never mind about that.

A. —1923; and by virtue of the records we establish the fact that the Claggett——

Mr. Vaughn: I object to that; not competent, not responsive.

The Court: Did you examine the records yourself?

A. Yes, sir; I myself examined the records.

Mr. Vaughn: Make the further objection the record is the best evidence, your Honor.

The Court: Well, he just states how he arrived at his conclusion.

Mr. Vaughn: And that it is a conclusion of the witness.

The Court: And that is the way he arrived at it, stating the basis for it. Overruled.

A. On October 18, 1882,——

Mr. Vaughn: I object to the reference to a memorandum unless we know how it was made.

The Court: Where did you make that?

A. Out of an office of the recorder of deeds.

The Court: You made it yourself?

A. Yes.

The Court: Overruled.

A. That Mrs. Grace Boxley, who was a negress, on October the 10th, 1882, became the recipient of a parcel of property or a lot.

The Court: How did you know she was a colored person?

A. Because I knew her descendants.

Mr. Vaughn: If the Court please, I submit that's not sufficient knowledge because, of the thirteen million negroes in America, twelve million of them have had one white parent.

[fol. 43] Mr. Seegers: Oh, now,——

Mr. Vaughn: That is a scientific fact; I can establish it among the authorities as stated in the Reader's Digest awhile ago.

The Court: I have no doubt that's approximately true.

Mr. Vaughn: So that the descendants of a person doesn't tell to what race he belongs. For that reason I say it is incompetent.

The Court: Objection overruled. It may not be conclusive.

A. I knew the Washington Boxley and also Alice Boxley, I knew them, I knew them from childhood. That's how I establish the fact Boxleys are Negroes.

The Court: You still haven't answered how they came into possession of this property.

A. They came into possession of this property by virtue of a grant.

The Court: A deed to them?

A. That's right; by William H. Claggett.

The Court: Is he the man that laid out this subdivision?

A. That's right.

The Court: All right.

Q. Now, Mr. Koob, do you know from your own knowledge and examination of records whether that grant you just referred to from Claggett to Boxleys covered one or more lots in this particular block?

The Court: Well of course the record would have to be the best evidence of that.

A. Well, I don't know; I don't know.

Q. Do you have any knowledge of your own with respect to 4610 Labadie avenue, as to how it became the property of Negroes?

A. That was a transfer of later date. That was a much later date than that.

Q. Approximately when?

A. Well, the next parcel of property was 1904. That was the 4606 piece. That was owned at the time (examining a paper) by Frank McElroy in 1904. Well, he was a colored person.

Q. And 4610?

A. That transfer I can't give you the specific date of.

Q. Well, now how long have you know Negroes to live at 4610 Labadie?

The Court: He stated that.

[fol. 44] A. I stated before, to the best of my recollection 30 years. That may vary.

Q. Now, Mr. Koob, from your own personal knowledge have any Negroes or Negro families moved into any other residences in the 4600 numbered block of Labadie within the period of your memory?

A. No.

Q. Within the last 30 years you know of none?

A. No.

Mr. Seegers: That's all.

A. That may vary in years; I don't want to be pinned down to any specific year.

Q. Within the period of your memory of 4500 and 4600 blocks of Labadie avenue, has that neighborhood changed with respect to occupancy by Negroes or whites, within the last 25 or 30 years?

A. No; the character of the neighborhood definitely——

Q. With respect to Negroes' occupancy, it increased or decreased, or what?

A. No decrease; I would say it increased.

Q. Are you familiar from own experience and knowledge, Mr. Koob, with what happens to property values in a neighborhood populated by whites, and Negroes move into it?

Mr. Vaughn; Just a minute. If the Court please, I don't think that's a proper question. This witness isn't qualified as an expert.

The Court: Sustained. The witness testifies as to values of real estate.

Q. Now, Mr. Koob, with respect to the nearest point to 4600 Labadie that is populated either predominantly or

exclusively by Negroes, what distance exists between such a point in any direction and 4600 Labadie.

A. 4600 Labadie; two blocks.

Q. Two blocks; and you would say——

A. At least two blocks.

Q. Two blocks from 4600 Labadie is a street predominantly or totally occupied by Negroes?

A. Yes, sir.

The Court: What direction?

A. East. From Newstead east.

[fol. 45] Q. Now, Mr. Koob, with respect to that condition two blocks east of 4600 Labadie, how long in point of time has that particular point been predominantly occupied by Negroes?

A. 10 years at least.

Q. 10 years at least?

A. At least.

Mr. Seegers: That's all.

Cross-examination.

By Mr. Vaughn:

Q. Mr. Koob, where were you born?

A. In St. Louis. You mean the specific address?

The Court: No; that's enough. St. Louis is sufficient.

Q. When were you born, to know your family history?

A. I was born in 1904.

Q. So that all of these questions, 25, 30 and 40 years, 1882 that you testified to, that's not of your own knowledge; that's all your research, is that right?

Mr. Seegers: Now, if the Court please, I object to that for the reason it is a triple question, refers to 3 or 4 distinct instances. Counsel should split them up.

The Court: Ask him about one locality at a time.

Q. Now, you say 4608 from 1882. That's, of course, 'way before you were born.

A. That's right.

Q. About 12 years before you were born. What you testified to—is 22 years before you were born. What you

testified to in reference to that is a result of your looking up records or things of that sort?

A. Yes.

Q. When did you first go to live in the neighborhood where you say where you now live?

A. 1904.

Q. And you have lived where since 1904?

A. In the general district that I outlined there.

Q. How far have you lived, do you now live from the 4600 block on Labadie avenue?

A. My home is a possible half mile, three quarters of a mile.

[fol. 46] Q. And has always been?

A. No, of recent date; and specifically I am living in this residence since 1937.

Q. Which is where?

A. 4935 Cote Brilliante; east of Kingshighway on Cote Brilliante.

Q. 4935 Cote Brilliante. Now, where did you live prior to that time?

A. 2823 Marcus avenue.

Q. And how long have you been connected with this organization, this improvement association?

A. Oh, I have been associated there for some 20 odd years.

Q. 20 odd years; and you have held an official position how long?

A. Oh, official positions all through those years, a matter of being a director. Of recent date I happen to be president of the organization.

Q. Now, as I understand your testimony, you say that the nearest Negroes who live, other than the few you talked about, to 4600 Labadie are 2 blocks away?

A. Yes.

Q. Is that east or west?

A. That's east of 4600.

Q. You know where Maffitt is, don't you?

A. Two blocks away from Labadie.

Q. Two blocks north of Labadie?

A. Two blocks south of Labadie.

Q. South of Labadie?

A. Yes.

Q. Isn't it a fact, Mr. Koob, that negroes live on Labadie avenue in the 45- and 4600 block,—Maffitt?

A. Maffitt; yes.

Q. Also live on St. Louis avenue in those blocks?

A. In the 45- and 46, they live there now?

Q. Do you know that to be a fact, I asked you.

A. No, it isn't.

Q. Did you ever know a man named Alexander in the 4600 block who worked for the government?

A. I knew a man named Douglas, two families on St. Louis avenue between Cora and Marcus, that lived there for many years. I knew the families, both of them.

[fol. 47] Q. Yes. A large number of Negroes live on Cora avenue, do they not?

A. South of Kennerly, yes.

Q. Well, they live north of Kennerly?

A. No. No.

Mr. Seegers: If the Court please, if he will tell us these distances; I am not that familiar.

The Court: Try to be more definite. Where is Kennerly with reference to Labadie?

A. 3 blocks removed.

The Court: South, or north?

A. South.

The Court: It runs parallel with Labadie?

A. It runs parallel to them: Labadie, St. Louis, Maffitt and Kennerly.

Q. And Cora?

A. Cora is the street that divides between Taylor and Marcus?

The Court: It runs north and south?

A. South.

The Court: His question is whether colored people live on Cora between Labadie and Kennerly.

A. There are none.

Q. They live on the block south, between Labadie and the street south of it?

A. They live between Labadie and St. Louis, no, they don't live between, there's no frontage on Cora property.

Q. Are you acquainted with the property at 4614 Labadie avenue?

A. 4614?

Q. Yes, sir.

A. I can't picture the property, no, unless that's the 4610 I have reference to.

Q. Don't you know about 9 years ago a colored woman named Ruth Ward Williams built a house at 4614 Labadie avenue? Dorothy *Word* built a house at 4614, now Dorothy Hicks, built a house at 4614 Labadie avenue?

A. Dorothy Ward. She built the house; can I give you the history of that.

Q. I asked you if you know that fact.

A. Yes; she built the house after two——

[fol. 48] The Court: Never mind about that; just answer the questions.

A. Two form questions.

The Court: Just a minute. Did you hear me? Answer the question.

A. Yes.

The Court: Don't volunteer anything.

Q. I will ask you if, since that house was built by Miss Ward, Negroes haven't occupied it.

A. Yes, sir.

Q. Do you know who now lives there?

A. As far as I know, Miss Ward, Dorothy Ward.

The Court: Is she a colored person?

A. Yes.

The Court: That's 4614?

A. That's 4608, to my knowledge.

The Court: The question was about 4614.

A. Well, there are no Negroes living at 4614.

Q. Don't you know that the Wards now live and have lived, ever since that house was built, at 4614 Labadie avenue? Did you learn that fact?

A. (Examining a paper) I am not familiar with the addresses; let's strike—I know Dorothy Ward lives there——

The Court: 4614 would be west of 4610?

A. Yes.

The Court: 4608 is east. Do you know of any colored families live west?

A. At—4614, that house may be—no, I don't.

Q. Did you ever know a colored schoolteacher at the time who lived in that block, named Robert Watts?

Mr. Seegers: I object; it's too indefinite. What block is it?

Q. 4610 Labadie avenue; that's the only one we are inquiring about, that block.

A. Yes.

Q. Did you know him?

A. Yes.

Q. Where did he live?

A. 4606. Or -4; one of those homes in there. I am not sure of the specific address; I knew the man.

Q. Isn't it a fact that he lived 4608?

[fol. 49] A. Well, that's the number, that's the Boxley estate I am talking about. If the Court please, just a minute.

The Court: You said 4608. He inquired about that.

A. There were 2 homes involved to begin with; now one home is there, that's the home——

Q. Didn't colored people during the time Robert Watts lived at 4608, live at 4606 and 4604 on Labadie?

A. I don't know about Robert Watts. I testified at the outset that 4606 was owned by Mr. Frank McElroy; I knew Mr. McElroy, he——

Q. But you did testify a minute ago Robert Watts, didn't you?

A. Yes; but he lived in the same house.

Q. Frank McElroy?

A. Yes.

Q. Well, who lived at 4604 and 4610?

A. Who lived in there? There were so many people lived in there through the years I couldn't give you those names; it would be difficult.

The Court: Well, if you don't know just tell him you don't know.

Q. Now, are you acquainted and have been during all these years with 4606 Labadie?

A. 4606; yes.

Q. Did you know a colored family named Penney who lived there from 1937 to 1944?

A. I don't know them.

Q. You didn't know them. Now, do you know a man living in the 4600 block on Labadie avenue named Elijah James?

A. No, I don't.

Q. Don't you know as a matter of fact, Mr. Koob, that he lives at 4608, in the same house Robert Watts used to live in?

A. I don't know that.

Q. And you don't know that he moved in the last year and a half, do you?

A. I don't know that. I only know that that's been occupied by colored people over a period, a span of 30 years they have been moving in and out; whether they are relatives or what they are, I don't know their names.

Q. How old do you say you are now?

A. How old I am?

[fol. 50] Q. Yes, sir.

A. I am exactly 41 years old.

Q. Now, then when you were 11 years old how close to the 4600 block of Labadie avenue did you live?

A. I lived 2 blocks away.

Q. What was your address at that time?

A. 2823 Marcus avenue.

Q. Now, haven't the population in the neighborhood of your bakery increased in the last 5 years?

Mr. Seegers: I object to it; it's too indefinite. If he wants to talk about the bakery let's specify the distance from the bakery, and the condition.

The Court: Objection overruled.

Mr. Vaughn: You went into it.

A. What distance?

The Court: Never mind, now. In the neighborhood of your bakery has the colored population increased in the last 5 years?

A. It has advanced.

Q. How far is your bakery from the Cote Brilliante school?

A. It is approximately 3 blocks.

Q. Eh?

A. 3 blocks approximately.

Q. Isn't it true, Mr. Koob, the Cote Brilliante school is now and has been for the past 3 or 5 years almost entirely surrounded by colored families?

Mr. Seegers: I object to it; too indefinite to give us any picture.

A. It has been entirely surrounded by colored?

Q. I said almost entirely surrounded.

A. No.

Q. Well, haven't there been a larger number of colored people living near that school and attend it than whites?

A. No.

Q. It now has been turned over to colored children, hasn't it?

A. That's right.

Mr. Seegers: I object to it for the reason it is irrelevant and immaterial to any issues in this case.

The Court: Overruled.

[fol. 51] Q. Did you have any hand, or any part in the effort to keep colored children from having the Cote Brilliante school, Mr. Koob?

Mr. Seegers: I object to that for the reason it is certainly immaterial and irrelevant, and refers to issues in another case pending before this Court.

The Court: Overruled.

A. What is your question?

Mr. Vaughn: Read the question.

The Court: Did you have any part in bringing that suit?

A. Is that the case before the board of education? I did.

Q. And you have also a personal interest in this case, do you not, as an officer of the association?

A. I am discharging an obligation.

Q. And what obligation is that, Mr. Koob?

A. How's that?

Q. What obligation is that?

A. To the people who belong in the community there.

Q. You still haven't answered my question; I asked you what obligation is that.

A. The protection of their property.

A. And in that you are here testifying in this case in an effort to enable the plaintiffs here to prevail in this

injunction suit, in protecting, as you say, the property of the people in that community?

A. That's right.

Q. Do you know a colored woman named Sarah Young, who lives in that 4600 block on Labadie avenue?

A. I heard of her; I don't know her.

Q. Do you know what she does for a living?

A. I heard it mentioned here, that she does some work in the courts.

Q. Yes.

A. That's all I know.

Q. Did you never learn, before you heard it in this courtroom, that Sarah Young was a member, worked in the juvenile court and has for a long number of years?

A. I knew she worked with the court, but the specific court I learned while in this courtroom.

Q. Don't you know Sarah Young has lived in the 4600 [fol. 52] block on Labadie avenue, in property that she bought about 22 years ago, during all these years since that time, and now lives there?

A. Is what?

Q. That Sarah Young now lives on Labadie avenue, in the 4600 block of Labadie.

A. I said that before.

Q. That she bought about 22 years ago?

A. There have been no transfer; I testified about that before, answered that question on that before.

Q. Do you say yes or no?

The Court: He knows Sarah Young lives on the block and has lived there for some time.

A. That's what I answered before.

Q. Well, when did you first learn that she lived there?

A. When did I first learn that she lived there?

Q. Yes, sir.

A. I heard she lived there some 20 years ago, 22 years ago.

Q. 22 years ago?

A. Yes.

Q. Do you know when this restriction was placed on this property in the 4600 block on Labadie avenue?

A. 1911.

Q. 1911?

A. Yes.

Q. So at least Sarah Young moved into that block since the restriction; that's correct, isn't it?

A. Yes.

Q. Do you know that the Ward woman bought and moved into that block since the restriction, and built a house?

A. I told you what the Ward woman did; she built a house on the Boxley estate; the Ball Lumber Company built it.

Q. Do I understand you, the property on which the Ward woman's house now stands is on the Boxley estate that formerly belonged to a Negro; is that right?

A. That's right.

Q. Couldn't be mistaken about that?

A. Not if the records are right.

Q. Don't you know 4608 is the Boxley estate?

A. The records recite Dorothy Ward is the party in this particular house owned formerly by Alice Boxley King.

[fol. 53] Q. You say that's Alice Boxley King?

A. She was the former owner after it came down thro the——

Q. Were you in the courtroom this morning before the lawsuit, at least when Mrs. Sohlmann testified?

A. Yes.

Q. Do you know what number her property is in the 4600 block of Labadie avenue?

A. Yes; 4600 even. She said she was the owner of this piece.

Q. From your investigation of records do you know?

A. Do I know? Yes.

Q. What is that number?

A. 4600.

Q. And did you hear her, testified on both sides of her that colored people had lived for the past 20 years?

A. Did I hear her testify that on both sides; no, I didn't hear her testify.

Q. Didn't you hear her testify on either side next door to her colored people had lived for the last 20 years?

A. No.

Q. Or 2 doors from her?

A. I heard 2 doors or 3 doors, but not next door.

Q. Didn't hear her testify about colored people, families, lived close to her?

A. 3 doors from her.

Q. That is a fact, isn't it?

A. Yes.

Q. Is that west of her, or east of her where these colored families live?

A. That's west of her.

Q. And that's in the 4600 block, isn't it?

A. That's right.

Q. West of her. Did you know a colored family, a colored man named Amos Hicks and his family that lived at 4614 Labadie avenue during the past 4 or 5 years?

A. (Laughing) No; didn't.

Q. Did you know a man named Shackleford who, during the last 9 years, has lived at 4610?

A. I don't know the man.

[fol. 54] Q. And did you find out by your investigation, records, these people lived there?

A. My investigation of the records ascertains the fact how long Negroes have been there.

Q. Did you see any colored children playing up and down the street in the 4600 block of Labadie avenue?

A. No; I don't see any.

Q. How often do you go over there?

A. Don't have any occasion to get over there too often. I probably pass the street there 2 or 3 times a week coming, driving through the street coming west.

Q. Do you have any Negro customers at your bakery?

Mr. Seegers: I object; it's immaterial to any issue.

The Court: Overruled.

Q. Answer that.

A. Do we have any?

Q. Yes, sir.

A. I am not in that close touch.

Q. What do you mean, you are not in that close touch?

A. I am not behind the counter. We have 22 girls representing us in sales; I wouldn't know, couldn't answer that question honestly.

Q. What position do you hold in that company?

A. I am a partner.

Q. Do you handle any part of the business?

A. Certainly I do.

Q. What particular item—what part of the time do you spend at your plant?

A. All my time there.

Q. Do you spend it in the sales room?

A. I spend it in the office, in the distribution, in production; we have 6 retail stores in north St. Louis, and I can't confine my activities to one shop.

Q. Did you, Mr. Koob, make an investigation and write those notes up for the purpose of making use of them in this trial?

A. How's that? (Question read.) I refreshed my memory with them, yes.

The Court: You made them for the purpose of this trial?

A. Purpose of this trial; yes.

The Court: All right.

[fol. 55] Q. And when did you make them?

A. These notes I have?

Q. Yes, sir.

A. I made them Monday of this week.

—: Before that time, before you made those notes you had no independent recollection?

A. Oh yes. I had some references or data that was handed to me by virtue of dope that the association had.

1 p. m.-2:22 p. m., recess

Q. Mr. Koob, do any Negroes live in the 4500 block of Labadie avenue?

A. Yes; right at the very edge of it.

Q. Which edge?

A. 4562.

Q. That's where Mr. Taylor Young lives, isn't it?

A. Yes.

Q 4562.

The Court: 4562; is that west of Taylor? Yes.

A. That's west of Taylor.

Q. That's west of Taylor.

A. I don't know how many live in it. It's a parcel of property that's occupied, that Sarah Young holds it. There may be others living in it.

Q. Now I ask you: this is 4600 even where Shelleys live?

A. That's the house in question, yes.

Q. Well, do you know whether they live there or not?

A. I am told they live there; I have—I don't know by coming in contact with them, no.

Q. Well, now you don't know who lives at 4608?

A. 4608, -10 and -14 I know are occupied by colored people, but I don't know who the, who lives in those homes.

Q. In the course of your knowledge you don't know when they moved there?

A. As I—there haven't been any people moved into those homes, any colored people moved into those homes, or rather, 'way back, occupied by colored people 20 years ago to my knowledge, in 4608 and -10.

Q. And when did 4614 become occupied by colored people?

A. 4614 I testified before, as I spoke about before, was [fol. 56] not the house that the Boxleys owned; I was mistaken there, and I verified the address myself. I didn't take the address from the city hall; it was given to me by one of the men in the record office, and I verified that only a half hour ago that it's 4614 where the Boxleys lived.

Q. Then they didn't live at 4608?

A. No.

Q. So that the property at 4608 has been occupied in the last 20 years?

A. In the last 20 years, past 20 years, at least 20 years ago; that's what I say.

Q. That's true of 4610 also?

A. 4610.

Q. And that's true of 4562?

A. They are all past 20 years, that's true, they have been occupied by colored people over 20 years.

The Court: How far east of 4600 is 4562?

A. It's immediately east of it.

The Court: Next house east?

A. That's right.

Mr. Vaughn: Next door east, your Honor.

Q. Now, these 2 blocks from Taylor avenue, what's the next block——

A. Cora.

Q. From Taylor to Cora, on both sides of Labadie avenue, those are the restricted blocks there?

A. Not entirely; those particular parcels we mention there are not restricted.

Q. Well, are there any others not restricted?

A. That I don't know, how many others; there are others, yes; how many I don't know offhand.

Q. They are probably, then, occupied and owned by white people in there who are not restricted; that's correct, isn't it?

A. I believe so.

Q. You don't know how many they are?

A. I don't know.

Q. Would you have an idea?

A. I wouldn't give an approximate idea, either; I would actually be guessing. I would rather establish something by comparing with the records, the plat book.

Q. Well, now I understood you did arrange to show you made this investigation last week or month, or this week, [fol. 57] with the idea of testifying in this case: that's correct, isn't it?

A. Not with any idea of testifying; not with any idea of testifying. As a matter of fact, I had some misgivings about being here today.

Q. Well, you knew you were to be called as a witness yourself; do you know?

A. Through counsel this morning.

Q. Counsel asked you while you were here in the court to appear as a witness?

A. That's right; as a witness.

Q. Did you confer with anybody as to wh[illegible] testimony they wanted of you; with anybody?

A. I conferred with counsel this morning, yes.

Q. Anybody else?

A. No.

Q. Then you would say I am mistaken when I remember you to have testified before luncheon that you would make this survey for the purpose of testifying in this case?

Mr. Seegers: I object to the wording of the question.

The Court: Overruled.

A. That you were mistaken?

The Court: He wants to know, was he mistaken in assuming in his recollection that you testified you made these cop-

ies over at the recorder's office and refreshed your recollection for the purpose of testifying in this case.

A. Not testifying in the case, but to hand them over to counsel if he didn't have them.

Q. Well, did you say this morning that you made them for the purpose of giving testimony?

A. I beg your pardon. Did I say what?

The Court: Didn't you say this morning you made them for the purpose of giving testimony?

A. No, I didn't say that.

Mr. Vaughn: I believe that's all. That's all, sir.

Redirect examination.

By Mr. Seegers:

Q. Mr. Koob, did you make a very recent examination of the numbers on the houses out in the 4500 and 4600 block on Labadie avenue?

A. I got them a half hour ago.

[fol. 58] Q. Half hour ago. And will you state again, so there will be no question about it, the numbers of the houses in those 2 blocks now occupied by Negroes?

A. Shall I give the numbers?

Q. Do it now.

A. They are 4562, and 4608, 4610 and 4614. With the exception of 4600, which is the——

Q. Well, excluding the present piece of property, yes. Now, within the scope of your memory have those 4 pieces of property just enumerated by you been occupied by other than Negroes?

A. No.

Q. So that for the entire period that your memory goes those 4 pieces have been entirely occupied by one or another Negro family?

A. That's right; as long as I have been associated with this organization.

Q. What type of houses are all these houses we are talking about; are they single dwellings, or flats, or what are they?

A. Well, one I believe is a flat; it was formerly a dwelling, it may still be a dwelling; that's 4652. 4608 is a cottage, and 4610 is a cottage, and 4614 is a bungalow type cottage.

Q. Single dwelling?

A. That's right.

Q. Now, Mr. Koob, do you know of your own knowledge whether or not the property at number 3562—or, 4562, 4608, 4610 and 4614, were those properties included in the restriction agreement introduced in evidence this morning?

A. They were not.

Q. Mr. Koob, how many years experience have you had in connection with the signing of these covenant or restriction agreements?

A. I should say that I have had some 18 years.

Q. When you have one of these covenants or restrictions signed up do you ever find that a certain individual may own more than one lot in the particular area being restricted?

Mr. Vaughn: If the Court please, I object to that as being wholly incompetent; I can't see the purpose.

The Court: Overruled. Let's see what it is.

Q. Do you ever find, Mr. Koob, within any area sought to be restricted you find some individuals or individual who own more than one lot?

A. Oh yes.

[fol. 59] Q. When you find that situation occurring do you have that person sign the covenant for each lot that he owns, or sign it only once?

Mr. Vaughn: Wait a minute.

A. He signs it once.

Mr. Vaughn: I object to it.

The Court: Sustained; immaterial.

Mr. Vaughn: It's also leading.

The Court: What they do generally in other cases we don't care about here.

Q. Mr. Koob, in this particular case did any of the signers own more than one lot?

Mr. Vaughn: If the Court please, there's no showing Mr. Koob had anything to do with the signing of this covenant.

The Court: This covenant was signed when?

Mr. Seegers: 1911. If the Court will permit me to say what I started to say, the purpose was to show, the Court called for evidence as to the proportion of lots signed up.

Now, we can not get a true picture of that, take for instance a covenant shows only 33 people sign, and that there are 45 different lots in this section; how can we get the proportion unless we have evidence to the effect that a person signing more than one lot signs only once, or more than once?

The Court: You can have such evidence, but Mr. Koob doesn't know.

Mr. Seegers: The objection was sustained on the ground it was immaterial, your Honor.

The Court: Yes, it was immaterial; and you asked when it was written up, when it was prepared, and he was only 7 years old then.

Q. Mr. Koob, on cross-examination you were asked this question by Mr. Vaughn: do you have an idea about how many pieces of property in the 45- and 4600 blocks of Labadie avenue were not included in this restriction agreement. Do you remember that question?

A. Yes.

Q. You may answer that question now, and give your best recollection.

Mr. Vaughn: I object to it, your Honor. He said he didn't know.

The Court: Sustained. He said he didn't know.

[fol. 60] Q. Do you have any knowledge as to the approximate number?

Mr. Vaughn: Object to that for the reason I asked him the same question; he said it would be a guess. Approximately the same question; that he wouldn't want to guess at it.

The Court: I don't want you to guess at it. Have you made any examination of the records yourself?

A. I would say I have had; I can't answer it without referring to them.

The Court: Very well; he can't answer it. Do you know how many lots there are in the 4600 block altogether?

A. How many lots there are?

The Court: Yes, sir.

A. Frankly I don't.

Mr. Seegers: I have the plat books under subpoena, your Honor.

The Court: Very well.

Q. How many separate and distinct signing of signatures or seals appear on this covenant?

Mr. Vaughn; Just a minute; the covenant is the best evidence.

The Court: That's merely a mathematical computation.

Q. Have you counted them?

A. Yes. 33.

The Court: You may check that if you wish. Here is the copy of it.

Mr. Seegers: I am merely trying to get the mathematical figure before the Court.

Mr. Vaughn: Yes; but I understand the way to get it is from the record itself.

The Court: Well, the objection is overruled; it is merely a matter of counting, and we have a copy here. You can count it, if you wish; check up on that. It saves me the trouble counting it, that's all. I would be glad to have somebody count it.

Mr. Vaughn: All right, your Honor.

The Court: Proceed, sir.

[fol. 61] Q. Mr. Koob, with respect to the questions on cross-examination involving these notes that you prepared, did you prepare these notes for the purpose of testifying in the case?

A. No, I did not.

Q. Did you prepare these notes for the purposes of trial of the case?

A. I don't quite—elaborate on that.

The Court: He testified he prepared them to assist you in the trial of the case.

Mr. Seegers: That's all.

Recross-examination.

By Mr. Vaughn:

Q. Well, you are interested personally in this case, aren't you?

A. Yes, sir.

The Court: Don't argue with him, please sir. He stated he prepared them to assist counsel, and is president of the association and all that; let's not argue about that.

Mr. Vaughn: My purpose, your Honor, I just want to show his interest.

The Court: Well, you asked him that before, and he has shown his connection with this organization and has shown he prepared this for the purpose of assisting counsel; to that extent he is personally interested. He isn't personally interested in the sense—(to the witness)

—. You don't own any property in this block, do you, Mr. Koob?

A. No, I don't, your Honor.

The Court: Doesn't own any property in this block.

A. I show you this copy, Mr. Koob;——

The Court: Are there 33?

Mr. Vaughn: Yes, there are 33, your Honor.

The Court: All right.

Q. —ask you if you know any of the persons on there.

A. Do I know any of the persons?

Q. Yes; any of the persons whose names are signed on there.

A. You mean—I know several persons who signed this, but they, the signers that I know are dead. I know, to enumerate them,——

[fol. 62] Q. No, I didn't ask you that. So, as I understand you, the persons whose names are signed there that you knew are now dead?

A. That's right.

Q. That's correct. Thank you.

A. I know they are legal recipients of the property.

Mr. Vaughn: Move to strike out the last, your Honor; voluntary.

The Court: Sustained; strike it out.

Mr. Seegers: That's all.

Questions by the Court:

Q. As I understand, you say there's only one house occupied by colored people in the 4500 block?

A. That's right.

Q. Only one?
A. That's right.
Q. And that's between Taylor and Euclid?
A. 45 and 46.
Q. Oh, that's between 46 and Taylor?
A. That's right.
Q. One family?
A. One family.
Q. How about between Taylor and Newstead?
A. Between Taylor and Newstead there are none.
Q. None at all?
A. None at all.

The Court: All right. That's all.

Martin C. Seegers, sworn, on Direct Examination by Mr. Seegers in Behalf of Plaintiffs, testifies:

Q. Will you state your name, please?
A. Martin C. Seegers.
Q. Where do you live, sir?
A. 4731 A Maffitt avenue.
Q. How long have you lived there?
A. 46 years.
Q. Do you own that property?
A. Own that property.
Q. Where did you live before you moved to this piece of property?
A. 4604—or -40 McKeever place, now known as Elmbank avenue.
Q. Now, Mr. Seegers, with respect to 4600 Labadie avenue, how far away from that point do you now live?
[fol. 63] A. Oh, 1, 2, 3—3 blocks and a half.
Q. Is your property located within the territory outlined by Mr. Koob as being covered by the Marcus Avenue Improvement Association?
A. Yes, sir.
Q. Have you been or are you now a member of the Marcue Avenue Improvement Association?
A. Yes.
Q. How long have you been a member?
A. Since either 1923 or 1924; I ain't so sure about that.

Q. Now, how far is this address on McKeever, now Elmbank, from 4600 Labadie?

A. Well, that would be Greer, Labadie avenue; two blocks.

Q. Two blocks. And during what years did you live on McKeever?

A. From 1896 to 1899.

Q. Is your memory fresh with respect to events that occurred during those years, at that point?

A. Yes, sir.

Q. Are you familiar with the 4500 and 4600 blocks of Labadie?

A. Yes.

Q. For how long a period have you been familiar with those 2 blocks?

A. For 49 years.

Q. Now, Mr. Seegers, going back the 49 years that you can remember of 4500 and 4600 Labadie, were there any Negroes living in either of those 2 blocks?

A. I only recall, either '23 or '24, that I got the knowledge of them Negroes being there. I did see some, but I wouldn't try to fix the date.

Q. But you are sure that since 19—well, have you known of any Negroes to move in there, into either of those blocks, since 1923 or 1924?

A. No.

Q. Well, how long prior to 1923 or '24, if you can, do you have an independent knowledge of Negroes living in those 2 blocks?

A. Well, yes, I did see some there before that. But just how long I couldn't venture to say.

Q. Well, when you were living on McKeever in 1896 and '99 do you remember any Negroes living in Labadie avenue block 4500 and 4600?

A. No; I can't remember that.

[fol. 64] Q. During your life in that neighborhood have you seen the 45- and 4600 blocks of Labadie fill up——

A. Oh yes.

Q. —with residences? What were the race of people which built up those 2 streets during your memory?

A. Whites.

Mr. Seegers: I believe that's all.

Cross-examination.

By Mr. Vaughn:

Q. What is your name, sir?

A. Martin C. Seegers; S-e-e-g-e-r-s.

Q. And your address, Mr. Seegers?

A. 4731 A Maffitt avenue.

Q. What business? What business are you in?

A. Well, right now I am only a watchman. Used to be a clothing cutter by trade. Was until recent years.

Q. When did you move from what is now Elmbank avenue?

A. In 1899, I think, in October.

Q. Did you live close to Easton avenue on Elm avenue?

A. Close to Easton avenue?

Q. Yes, sir.

A. Elmbank runs the same as Easton avenue does; it's at least 10 or 12 blocks away from there.

Q. 10 or 12 blocks north?

A. North.

Q. When did you first become a member of this improvement association?

A. Either '23 or '24.

Q. Was that when it was organized?

A. No; it was organized in 1910.

Q. 1910. Do you mind telling us what induced you to become a member of that organization?

Mr. Seegers: If the Court please, I object to that for the reason it's immaterial and irrelevant.

The Court: He may answer it if he wishes. You may answer if you wish.

A. Why, simply to keep up the standards of the neighborhood.

[fol. 65] Q. Well, you mean by that that you wanted to keep the neighborhood white?

A. Not only that; keep away slaughter houses, junk shops, anything that was objectionable.

Q. Well, do you class colored people as objectionable along with slaughter houses?

Mr. Seegers: I object to that for the reason it is argumentative.

The Court: Sustained.

Mr. Vaughn: I would say my one, my purpose is to ascertain the mind of this witness. I know your Honor's rule, but I am doing that for the purpose of the record.

The Court: We don't want to get in such discussions as that, comparing colored people to slaughter houses, things of that character; we want to keep all such things as that out of the case. I am sure he has no such idea in his mind.

A. No.

The Court: It isn't a question of them being objectionable; it is a question of whether or not they violated the contract the parties made between themselves, regardless of everything else; that's the only question in the case. You don't have to be a nuisance to violate a restriction.

Mr. Vaughn: I don't know that I quite understand, your Honor.

The Court: I say you don't have to be a nuisance to violate a restriction.

Mr. Vaughn: I am addressing my question now to your Honor's remark; as I understood that that is the only question in the case.

The Court: The question in the case is whether equity would enforce this contract between the parties; that's the question in the case, of course, under the circumstances as shown by the evidence. And of course your constitutional questions are in the case, too.

Mr. Vaughn: Thank you, your Honor.

Q. Do you hold any office in this association?

A. A member of the board of directors.

Q. How long have you been such?

A. Since the first of the year.

[fol. 66] Q. As such member of that board, or as a member of the organization, did you have any part in the effort of this association to keep the board of education from turning over the Cote Brilliante school to Negro children?

A. Yes. On my own volition, though.

Q. Are you acquainted with Marcus avenue from Easton avenue north?

A. Yes, sir.

Q. How far north on Marcus avenue do you say Negroes are now living, north of Easton avenue?

Mr. Seegers: You mean how far north from Eastern avenue?

Q. From Easton avenue; yes, sir. From Easton avenue.

A. To my own personal knowledge I don't know any, except what I have been told.

Q. So far as you know personally they might live north of Labadie?

A. Oh no. I know that much, that they don't live there. They don't live as far as Kennerly avenue. That's too close to home that I wouldn't know that.

Q. Kennerly avenue is the next block south of Labadie?

A. No; that is Kennerly avenue is—comes St. Louis avenue, Maffitt avenue, then Kennerly.

Q. Do you know any Negroes living west of Taylor avenue on Labadie avenue?

A. I don't know them personally, only I know they live there.

Q. You know they do live there?

A. Yes.

Q. Now, in the years that you have lived out there how many colored—did you know a colored man who lived just west of Taylor avenue on the north side of Labadie avenue named Alexander for many years, had a family?

A. No, I don't.

Q. You didn't know him. Did you know that colored people lived in that spot there west of Taylor avenue?

A. Yes.

Q. How many families did you know that lived west of Taylor avenue on Labadie avenue, on the north or south side?

A. At one time there were 6 families there. Today there are 4.

Q. Do you know whether the personnel of these families [fol. 67] has changed in the last year or two; that is, one family moved out and another family moved in?

A. Well, no, I don't only by looking over the registration lists.

Q. Did you know Mr. Watts, a school teacher, when he here?

A. I heard of his name; didn't know him personally.

Q. Did you know Mr. Penny, that he and his family lived there in that block?

A. Didn't know them personally; only knew that he lived there.

Q. You don't know the parties who now live at 4614, 4610 or 4608?

A. Hicks lives at 4614; there was a different family lived there at one time.

Q. How long ago?

A. Oh, I don't know; maybe 6 years ago. It's guesswork. That's the house that Boxley had.

Q. Now, you referred to looking over the registration lists. Are you in any manner connected with the election officials in the precinct or in that ward there?

A. No.

Q. Canvasser, or anything of that sort?

A. No. Oh, I have canvassed already.

Q. How long ago since you canvassed?

A. When was the last election? I made a canvass. But not down there.

Q. Well, how long since you canvassed in that?

A. What?

Q. How long since you canvassed for those 2 blocks?

A. I didn't canvass in them 2 blocks.

Q. Never did canvass them?

A. Never did canvass them.

Q. You are acquainted with Joseph L. McLemore, aren't you?

A. The lawyer?

Q. Yes.

A. Oh yes.

Q. Didn't he live in the 4500 block on Labadie avenue?

A. Not to my knowledge. The first I knew him was north Market street.

Q. You won't say he didn't live there, would you?

A. Oh no, I wouldn't say that.

[fol. 68] Q. As I understand, you are not personally acquainted with any of these colored people who live in there now, or who have lived in there?

A. Nim didn't know one of them.

Mr. Vaughn: I believe that's all.

Mr. Seegers: How old are you, Mr. Seegers?

A. I will be 80 armistice day.

Mr. Seegers: That's all.

The Court: That's all, Mr. Seegers.

Mrs. George A. Edelen, sworn, on direct examination by Mr. Seegers in behalf of plaintiffs, testifies:

Q. Will you state your name, please?
A. Mrs. George A. Edelen.
Q. And where do you live, ma'am?
A. 4600 A Labadie.
Q. You live upstairs in the property involved in this suit?
A. Yes, sir.
Q. Are there any people living downstairs from you now?
A. This party in the suit.
Q. Mr. and Mrs. Shelley?
A. Shelley; yes, sir.
Q. They are colored folks?
A. Yes, sir.
Q. When did they move in?
A. A week ago Tuesday, on the 9th.
Q. A week ago Tuesday. Do you remember what time of day it was?
A. Around 8 o'clock in the morning.
Q. Had you seen either of those people prior to that morning?
A. Yes; I saw Mr. Shelley on Saturday before that time.
Q. Did he call upon you?
A. Yes.
Q. Can you recall what he said to you on that occasion?
A. I had reported a leak in the furnace, and he came to ask about it; and he told me his name was Mr. Shelley, and I asked him if he was the owner, and he said yes.
Q. Did he tell you when he had acquired it?
A. No, he didn't.
Q. How long have you lived there?
A. 6½ years.
Q. And to whom have you been paying your rent over that period?
[fol. 69] A. First we paid it to Mrs. Sherman, and then to the Bruno Real Estate, and the last month to the Bowers Real Estate.
Q. Did you receive any communications from the Bruny Real Estate Company that they were no longer collecting the rent?
A. Not 'til I called up. I talked to a girl first in their office and then after a man; he told me he had no more con-

nection with the place. I asked him who to pay the rent to; he told me call Jefferson 5157.

Q. Did you call that number?

A. I did, and reported the leak in the furnace.

Q. Who answered that?

A. A lady.

Q. Did she tell you who answered?

A. No.

Q. Did she tell you the name of the company?

A. No.

Q. When you paid your rent to the Bowers Real Estate Company how did you pay it?

A. A colored man came and said his name was Mr. Bowers; collected the rent and gave me a receipt.

Q. In what name was that receipt?

A. Who it was signed by; Mr. Bowers.

Q. Prior to last Tuesday a week when the Shelleys moved in had colored people come there and looked at the house?

A. Yes, sir.

Q. On how many occasions would you say that occurred?

A. On 3 that I am sure of.

Q. Was there a FOR SALE sign in front of that property?

A. Yes, sir.

Q. Whose sign was it?

A. Bruno Real Estate.

Q. Did you talk to any of these colored folks looking at the property?

A. The first party had a card from the Brune Real Estate asking us please shown them over.

Q. Whose name was signed on the card?

A. It was signed by their agent Burns.

Q. Did you show them through?

A. Yes, sir.

Q. How long ago was that, madam?

A. Oh, about 4 months ago; 3 or 4 months ago.

[fol. 70] Q. Were they the first colored people to come to look at the property?

A. No; there had been others when Mrs. Sherman owned it.

Q. When did the first colored people come to look at it, to your knowledge?

A. Well, I would say about 8 or 10 months.

Q. Did any white people come to look at it?

A. Yes.

Q. Would you say, Mrs. Edelen, that prior to 8 or 9 months ago no colored people had come to look at the place?

A. Not to my knowledge.

Q. Any colored people that came to look at it came within the last 8 or 9 months?

A. Yes, sir.

Q. While Mrs. Sherman owned the property were you ever requested by Mrs. Sherman or anyone else to show colored people through the property?

A. Yes.

Q. By whom?

A. They told me that she sent them; that's all I know.

Q. When Mrs. Sherman owned the property to whom did you pay the rent?

A. To Mrs. Sherman's son-in-law; he collected it all the time.

Q. It was only after Mrs. Sherman disposed of the property that Brune Real Estate Company got into the picture?

A. That's it.

Mr. Seegers: I believe that's all.

Cross-examination.

By Mr. Vaughn:

Q. Madam, how long do you say you have lived there?

A. About 6½ years.

Q. Who lived next door to you?

A. Which side?

Q. East side, say.

A. On the east side, Sarah Young.

Q. She was a colored woman?

A. Yes, sir.

Q. And she was living there?

A. When I moved there.

Q. Who was on the other side?

A. An Italian by the name Battisto.

[fol. 71] Q. How close did any other colored people live?

A. That was Mrs. Battisto, and another house between us, going west.

Q. That other house was to your west side?

A. There's 2 on the west side between us and the colored.

Q. And both occupied by colored?

A. Both occupied by white people.

Q. By white people?

A. Yes.

Q. How far away from your house was the closest house occupied by colored people on the west of you?

A. You mean now?

Q. No.

A. At the time I moved in?

Q. At the time you moved in.

A. There was only one house between when we moved in.

Q. Now how many are there between you——

A. There's 2 houses with white people between.

Q. 2 houses with white people between. You mean by that that one of those houses was occupied by colored people?

A. When we moved there; yes.

Q. When you moved there; now instead of 2 colored people west of you there's only one; is that it?

A. There's colored people west of us; there's 2 houses between us that are white people, and there's cottages on the other side of that that are colored people.

Q. They were all there when you moved in?

A. Yes, sir.

Q. Have any of them changed residences since——

A. Not to my knowledge.

Q. Since you moved in? And where did you live before you moved up here?

A. 4536 St. Louis avenue.

Q. You are not a member of this association?

A. No, sir.

Q. Have no interest in that?

A. No, sir; I am just a renter.

Q. Do you know the Hicks woman who formerly was named Ward;——

A. No.

Q. —lived there at 4614?

A. I don't know any of them.

[fol. 72] Q. Well, are you acquainted with the property, the bungalow type house which was built there?

A. I am.

Q. That is occupied by colored people?

A. Yes.

Q. How far is that from you?

A. That's the 5th house west of us.

Q. 5th house west of you?

A. Yes, sir.

Q. Now, madam, you don't know anything about what parts of properties are restricted there against colored people, do you?

A. No, sir; I don't.

Mr. Vaughn: I believe that's all.

Mr. Seegers: If the Court please, as far as any other witnesses that I would like, they are the witnesses discussed with your Honor this morning. We have under subpoena the books and records which will make it possible to prove the privity of estate between Warner and the Shelleys, as well as the plat book; so, without waiving my right to proceed further, it is perfectly all right with me for Mr. Vaughn to proceed, and later I will ask the Court to call the other witnesses that we talked about.

Mr. Vaughn: Your Honor, I don't like to jump in piecemeal; I would like opportunity for plaintiff to conclude his——

The Court: He only has his plat books, the records in the recorder's office.

Mr. Vaughn: Do I understand he has any more witnesses?

The Court: No; there are some witnesses here that he had them subpoenaed, but I propose to call them at the end of the case, unless they testify for one side or the other in the meantime. I don't know who they are, but I told him to have subpoenaed everybody who had any connection with this transaction. Now, whoever they are, unless someone calls them I propose to call them of my own motion after all the other evidence is in.

Mr. Vaughn: Of course we have no objection to their testifying now, but of course the Court has his reasons.

The Court: Well, I thought they might testify for somebody else. I want to ask Mr. Koob a question or two; will you take the stand?

[fol. 73] Emil Koob, resuming the stand, to questions by the Court testifies:

Q. Mr. Koob, as president of this Marcus Avenue Improvement Association do you keep a sort of a watch over the district, track of the district, see what's going on?

A. Yes.

Q. In the way of transfers?

A. That's right.

Q. Did you know that this property at 4600 Labadie was for sale?

A. I saw the FOR SALE sign, and I was told by the occupant, Mrs. Edelen, that it was for sale, see; and she had told me also that on several occasions she was approached by colored people.

Q. Well, now, then when you learned that the property was for sale and that colored people were looking at it, a number of different colored people had looked at it, did you say anything to the owner?

A. I called Mr. Berne——

Q. Did you say anything to the owner?

A. I called, yes I did; I called Mr. Berne by 'phone.

Q. Who was he?

—. Berne Real Estate Company; he had it for sale.

Q. Very well.

A. And I called him, and he gave me these words, that "Under no circumstances would I entertain the idea of selling that property to Negroes"; see?

Q. When was this that you called Mr. Berne?

A. This was, oh, some 90 days ago.

Q. 90 days ago?

A. That's right.

Q. Well, after that did you know that colored people had come to look at the property?

A. I was told by Mrs. Edelen, yes, that they had looked at the property.

Q. Was that after you talked with Mr. Berne?

A. That's right. And I tried to get in touch with Mr. Berne, but was never able to reach him.

Q. Did you ever attempt to get in touch with the owner of the property?

A. Mrs. Sohlmann?

Q. Yes.

A. We had written Mrs. Sohlmann a letter a copy of which is in our files, reciting the fact that the property was [fol. 74] restricted, see, and she abide by that by coming to a meeting that we held a possible week after she got the letter. In the letter we embodid the fact that we were meeting and she could come to the meeting and give the full detail of it.

Q. When was this meeting held?

A. The specific date I don't have.

Q. About how long ago?

A. Oh, that has been several years ago.

Q. Several years ago?

A. Yes.

Q. I am talking about after this period you knew colored people were coming to the property; it was for sale.

A. Oh! I tried to reach Mrs. Sohlmann then, but couldn't reach her. As a matter of fact, I thought it was out — her hands.

Q. Why couldn't you reach her?

A. She lived 4300 and I went there on several occasions, and I couldn't prevail on anyone to let me talk to Mrs. Sohlmann. I told the party I encountered at the door I came in connection with the 4600 Labadie avenue property; I didn't go very far.

Q. Did you write her a letter?

A. Yes; the copy is in our files.

Q. I don't mean this 2 year old letter.

A. No; I haven't written since then. All these attempts I made were personal; and moreover we sent a delegate to Mr. Berne's office hoping I wouldn't be recognized, and didn't get very far either. Trying to inform these people that the property was restricted and that the——

Q. Inform what people?

A. Berne Real Estate Company.

Q. Didn't they know the property was restricted?

A. Well, I don't know.

Q. Did you tell them?

A. Yes.

Q. Did you ever tell Mr. Berne that?

A. I told that to Mr. Berne by telephone; and then moreover Mr. Berne told me this, that he wouldn't entertain the idea under no circumstances, because of his membership in the exchange.

Q. This is a year ago you are talking about, isn't it?

A. This is 90 days ago.

[fol. 75] Q. How about the Bowers Real Estate Company knowing about that?

A. I didn't know anything about that; I didn't know anything about that until Mrs. Edelen got in touch with me; and immediately then on the transfer, when we ascertain

the fact the people who bought the property were colored, we ascertained that, we instituted proceedings; and because of the——

Q. When did Mrs. Edelen get in touch with you?
A. She got in touch with me when Mr. Bowers came over.
Q. When was that?
A. That was on a Saturday, and the——
Q. What date was it; can you give us the date?

Mr. Seegers: Was it the Saturday before the suit was filed, Mr. Koob?

A. Yes.

Mr. Seegers: The Suit was filed Monday, wasn't it?
A. Yes; and so Mrs. Edelen told me then a party by the name of Shelley——

Q. Never mind what she told you. It was Saturday when you heard about that?
A. Yes.
Q. Did you go to see the Bowers people?
A. I didn't go to see the Bowers people, no.
Q. Didn't get in touch with them?
A. No; we called——

The Court: I understand about that; just answer my question, now, will you, please sir? We will get along faster. I don't want some probability, but just answer the questions; we will get along better. That's all you were asked. Have you any questions?
Mr. Vaughn: Yes, your Honor.

Continued recross examination.

By Mr. Vaughn:

Q. Did you learn, Mr. Koob, this property was being looked at by colored people for the purpose of buying it, when Mrs. Sohlmann owned it?
A. Mrs. Sohlmann gave us her word that she——
The Court: Just answer the question,——
A. No.
The Court: Won't you, please?
A. Well, I did know that; I was told that.
Q. How long ago was that?

[fol. 76] A. Well, the earliest date was some 10 years ago.

Q. 10 years ago?

A. That's right. Then there was another date. I just can't recall that; I would have to refer to the file on that.

Q. When you learned that 10 *days* ago what, if anything, did you do as a member or officer of the improvement association about the matter?

Mr. Seegers: If the Court please, not for any other purpose than to complete the record, I wish to object to this line of questioning for the reason there is no legal duty or compulsion on this witness or any other party to the covenant to take any action until the contract has been breached.

The Court: Overruled.

Mr. Seegers: The question of estoppel may come in there.

Q. Please answer that question, won't you?

A. Won't you ask it again?

Q. When you first learned, as you say, about 10 years ago,——

A. I say 10 years ago now.

The Court: Please wait 'til he finishes; don't both talk at the same time.

Q. I understood you to say you first learned about it about 10 years ago?

A. Yes; I said that.

Q. Then I asked you what if anything you did in the way of making an effort to prevent colored people buying the property there, either as an officer or member of the Marcus Avenue Improvement Association.

A. We corresponded, and we got an accordant note from the owner.

Q. Is that when you wrote to Mrs. Sohlmann?

A. I went to see Mrs. Sohlmann in person.

Q. Well, did you write her a letter?

A. I wrote her a letter later, and Mrs. Sohlmann——

Q. And when do you say you wrote her the letter?

A. Well, I can't give you that, specify the date.

Q. Well, tell me whether 2 or 3 years later, something of that sort.

[fol. 77] A. Yes, something of that sort.

Q. And the occasion was when you learned colored people were coming to buy her property?

A. Yes.

Q. Did you learn about them coming to view any other property at the time?

A. No.

Q. You didn't learn about the Ward woman buying property up there and building a house?

A. Well, that was already in colored hands.

Q. Didn't you just say that wasn't the place that was in colored hands after you checked it up after lunch?

A. I checked it up and said my numbers were wrong; 4608 is colored, but I had it associated with Boxley.

Q. 4614 is also colored; that's the house the Ward woman owns?

The Court: Let's not go over that again.

Q. Did you learn a man named Shackleford bought 4610 Labadie 9 or 10 years ago?

A. 9 or 10 years ago?

Q. Yes.

A. No.

Q. Didn't learn about it?

A. Not at that time.

Q. Did you hear about it afterward?

A. I had no transfer 10 years ago.

The Court: Please answer the question.

Q. I just asked had you learned about it afterwards.

A. No.

Q. You want the Court to understand that the only property you have learned about in all these last 10 years is the property formerly owned by Mrs. Sohlmann at 4610 Labadie, that colored people visited with the idea of buying?

A. It was the only property that wasn't colored.

Q. Is that the only property in the 45- or 4600 block of Labadie that you have learned about colored p ple visiting occupied by white people, and colored people visited with the idea of buying in the last ten years?

A. That's the only one.

Q. Do you know anything about the number of trans- [fol. 78] fers, or approximate number of transfers, that have been made in those 2 blocks in the last 10 years?

Mr. Seegers: Oh, I object to that; I don't know what he means.

The Court: Well, he asked whether he knew approximately.

A. I know there have been transfers, but I wouldn't hazard a guess on how many transfers have been made.

Q. I am trying to ascertain if, in your activities as a member or officer of the Marcus Avenue Improvement Association, performing the duties which you told the Court awhile ago you performed and keeping tab on transfers and property and everything transferred there, if you have an idea about how many transfers have been made in the last 10 or 5 years.

A. Could I answer that——

The Court: Just say, if you have any ideas say yes; if you have not, say no.

A. No; I don't have any.

The Court: Very well. That's much simpler than going into long discussion.

Q. Of course you wouldn't know whether or not colored people bought any of that property in the last 10 years, would you, other than the one piece we have talked about?

The Court: Don't ask whether he would; ask if he does.

Q. Do you?

A. Other than the pieces involved? Yes; other than the pieces I was questioned about, I do know.

Q. How do you know? Just tell the Court how you know.

A. Well, I know that by a Mrs. Wilson who works for the Daily Record, and we got the information that way. And she lives at Labadie avenue, and she is a member of the association.

Q. Well, have you——

The Court: Where does she live on Labadie avenue?

A. 4652.

The Court: In the 4600 block?

[fol. 79] A. Yes. West of Cora.

Q. All you know about it, then, is what she has told you?

The Court: You say she lives west of Cora?

A. East of Cora; that's right, 4600.

The Court: Oh! Very well.

Q. Will you please answer that question?

A. She reports at the various meetings.

Q. And I say, that is all you know, what she reported?

A. Yes; together with——

Q. Have you made any visits to the places after you have learned property has been sold, to see who was the new owner?

A. We have especially——

Q. I just asked if you personally had done that——

A. No.

Q. —won't you please answer that question.

A. Whether there are new owners only through mailing lists.

Q. I asked you if you had personally made any visits to the properties that had been sold in those 2 blocks in the last few years, to ascertain whether or not the new owners were white or colored. That's clear, isn't it?

A. I have, yes; I have made several visits. Not to all of them.

Q. How many, would you say?

A. I would say 5 or 6.

Q. Would that be half of the new transfers?

A. I wouldn't—I don't know.

Mr. Vaughn: I believe that's all.

Mr. Seegers: Mr. Koob, you first learned from Mrs. Edelen that the Bowers Real Estate Company was collecting rent there on the Saturday before this suit was brought?

The Court: He said that. Let's not waste time with repetition.

Mr. Vaughn: And it's a statement, your Honor, not a question.

The Court: It's a very leading question, and it is repetition. Let's not get into that; he so stated.

Mr. Seegers: No questions.

[fol. 80] Questions Continued.

By the Court:

Q. I want to ask you a question or two: how many people that lived in this 4600 block of Labadie were members of your association?

A. How many? 4600 we have some 40.

Q. In the 46 block?

A. That's right.

Q. Are any of them here today?

A. They are gone now; they were here this morning.

Q. Do you know the plaintiffs in this suit, Mr. and Mrs. Kraemer?

A. Yes; very well.

Q. Are they here?

A. Mr. Kraemer was here this morning. His wife was undisposed today; she made that last Thursday, she asked to be——

Q. None of the other people that live on the block are here now?

A. They left at noontime; Mr. Zykowski, there were some 8 of them.

The Court: You mean the gentleman that testified?

A. Yes.

The Court: That's all.

Mr. Vaughn: Just one question: did you have anything to do with them coming here?

A. They had something to do with having me come here.

The Court: No, no; answer the question, now, please.

A. Yes.

Mr. Vaughn: That's all.

(Recess at 4:52 p. m. to 11:08 a. m. tomorrow, October 18, 1945.)

PLAINTIFFS REST IN CHIEF ON ORDER TO SHOW CAUSE

DEFENDANTS TESTIMONY IN CHIEF ON ORDER TO SHOW CAUSE

ROBERT B. WOODS sworn on direct examination by Mr. Vaughn in behalf of defendants, testifies.

Q. State your name, please.

A. Robert B. Woods.

Q. And where do you live, Mr. Woods?

A. I live now at 30 Lewis place.

Q. And what is your profession, business?

[fol. 81] A. I am the principal of the Divoll school.

Q. And how long have you been connected with the school system of the city?

A. 27 years.

Q. Did you ever live on Labadie avenue?
A. I did.
Q. At what number?
A. 4608.
Q. 4608 Labadie avenue. Did you own that property?
A. I did.
Q. And from whom did you buy it?
A. Frank C. Dietz.
Q. And — Mr. Dietz a colored man or a white man?
A. He was a white man.
Q. Do you know what he does for a living?
A. Well, at that time he was a policeman.
Q. In the police department of the City of St. Louis?
A. That is correct.
Q. How long have you lived there, Mr. Woods?
A. I lived there from around about 1923 to 1936.
Q. And then, you still own that piece of property?
A. I don't own it now.
Q. I believe it's in the name of Louise——
A. That's right.
Q. Louise Sparks?
A. Sparks.
Q. And Louise Sparks was formerly your wife?
A. That's correct.
Q. And as I understand it there was a separation, and in the settlement you turned that property over to her?
A. That's right.
Q. During the time you lived there, Mr. Watts, what other colored people do you know that lived in the block?
A. Well, there was a man named Frank McElroy who lived one door east of me. There was a Miss Sarah Young of the juvenile probation department who lived at about, I think 4562. And there was a family of Kings who lived two doors west of me, about 4614.
Q. King?
A. Yes.
[fol. 82] Q. And you have been away from out there how long?
A. Since '36.
Q. Since '36. Do you know a man named Shackleford who lives out there?
A. George Schackleford lives one door west of 4600 Taylor, about 4610, I think.

Q. Did you ever know a family named Penny who lived on that street?

A. I don't recall that name.

Mr. Vaughn: Thank you. Take the witness.

The Court: When did you buy this, Mr. Woods?

A. I don't remember the exact year; somewhere around 1923.

Q. The house was already built on the place when you bought it, wasn't it?

A. That's correct.

Q. And you went there to live?

A. That's right.

Q. Now, did anybody ever bring a suit against you?

A. No, sir.

Q. Anybody ever notify you there was a restriction on that property against colored people?

A. Not that I remember.

Q. Anything of that sort ever come to your mind?

A. No, sir.

Mr. Vaughn: That's all. Take the witness.

The Court: Do you remember the number of the lot you owned?

A. No, sir; I don't remember that, Judge.

Mr. Vaughn: To be frank, your Honor, I think it was lot 42. Lots 42 and 43. I will have the records.

The Court: Very well.

Cross-examination.

By Mr. Seegers:

Q. Mr. Woods, did you get a title to that place in 1923 when you purchased it?

A. Eh?

Q. A certificate of title?

A. That's right.

Q. Do you remember whether or not the title showed that was or wasn't restricted?

A. So far as that place is concerned there was no cloud on the title at all.

[fol. 83] Q. No restrictions on that property?

A. No restrictions.

Q. So that therefore you didn't buy nor live in from 1923 to 1936 a piece of restricted property, did you?

A. No.

The Court: Don't let's ask questions like that; that's merely a conclusion. Ask him about facts.

Q. Now, this Mr. McElroy who lived one door east of you, what property would that be?

A. I don't understand your question; the number of the house?

Q. No; the number of the house, sir.

A. Well, I suspect it would be 4606. I don't know; that would be the next door east, 4606.

Q. 4608?

A. That's right.

Q. And during what years was 4606 occupied by colored persons?

A. I don't know the years. When I went there Mr. McElroy lived there, and when I left there it was occupied by colored people.

Q. It was occupied by colored people in 1936?

A. As I remember, yes.

Q. Do you know whether or not there was a restriction on 4606?

A. I don't know.

Q. Now, Sarah Young who lived at 4562, she lived there in 1923 when you came there?

A. No, she didn't; she moved subsequent into that place.

Q. Were there white or colored people living in that place——

A. I can't recall that fact.

Q. You don't know whether there were Negro, or colored people living there?

A. I can't recall that.

Q. You say there's a family of King living about 4614?

A. Yes; either 4612 or -14; I don't know—John King.

Q. Is that the house originally built by a Miss Ward?

A. That's a house, yes, the property on which subsequently a house was built by Miss Ward.

Q. Yes. It has been testified to here that's 4614.

[fol. 84] A. Yes.

Q. Now, you testified a person named Shackleford lives one door west of 4610. Isn't the *the* same house we are talking about?

A. One door west of 4608.

Q. One door west of 4608?

A. Yes.

Q. Which would be 4610?

A. Yes.

Q. So that your testimony is that at the present time there are colored people living at 4562, 4608, 4610 and 4614?

A. I testify that according to my most recent recollection when I was over there that colored people lived at 4562, -8 and -10, and -14. Or last time I was over there; I haven't been over there in a long time.

Q. About how long?

A. Oh, a year or so.

Q. During the period from 1923 to '36 that you lived there did you see any residences that were occupied by whites become occupied by colored people?

A. Yes.

Q. Which one?

A. I don't recall, but it was a 2-family building one or two doors west of 4562. That was bought by a colored woman and occupied by her for a very short time, and subsequent to that she moved out, and the house was re-occupied by white people.

Q. Do you have any knowledge of your own, Mr. Woods, as to why she moved out? Was there a suit brought, or something of that sort?

A. There's nothing to which I could testify about that; I heard some rumours and so forth but I don't know any facts about the case.

Q. Do you know whether or not that particular property, which apparently is 4604,—I mean, you say it was 2 doors west of 4562?

A. One or two doors; I don't remember which.

Q. Well, we have had testimony there is a house numbered 4600, the subject of this suit, which is next door west from 4562.

A. Yes.

Q. If it was 2 doors from 4562 it would be either 4602 or 4604?

A. Yes, sir.

Q. Do you know whether or not that particular piece of property you now referred to is covered by restriction?

A. I don't know anything about that.

[fol. 85] Q. At the time you purchased your property at 4608 23 years ago, did you then check the records to see if there was a restriction?

A. I did through the Title Guarantee Company; they sent a report on it which showed no restrictions.

Q. And then is when you moved there, purchased it?

A. That's correct.

Mr. Seegers: Thank you, sir. That's all.

Mr. Vaughn: I believe that's all, Mr. Woods.

M. A. Burdzy

In lieu of a verbatim transcript of the testimony of M. A. Burdzy, the parties stipulate he testified as follows:

That he was vice-president of the St. Louis Title Company;

That he produced his office file of the complete chain of title covering 4600 Labadie avenue, and read therefrom all the examinations of title made from the date of this trial back to 1875;

That all the certificates showed the notation "restrictions as reported in the annexed certificate";

That he then read the certificate on which was recorded the restriction agreement at issue, and it showed as having been recorded in book 2400, at page 488, of the records of the recorder of deeds of the City of St. Louis;

That on the original title all of the certificates of examination, plus the certificate on which was recorded the restriction agreement, are clipped together into one composite document, and it is the total composite document which is given to the person ordering the title.

[fol. 86] Robert A. Bishop, affirming that he would tell the whole truth, on direct examination by Mr. Vaughn in behalf of defendants, testifies:

Q. State your name, please.

A. Robert A. Bishop.

Q. Where do you live, Mr. Bishop?

A. 4047 Garfield.

Q. And how long have you lived in St. Louis?

A. About 41 years.

Q. That's practically all your life, isn't it?

A. Just about.

Q. What is your business?

A. Real estate salesman.

Q. With what firm are you connected?

A. The E. M. Bowers Realty Company.

Q. How long have you been in the real estate business, Mr. Bishop?

A. Some years ago I was in the real estate, but recently I have only been in there for a few months.

Q. Well, when was your first acquaintance with it?

A. My first real estate was around 1924, if I am not mistaken, when I was secretary of the Pyramid Building & Loan Company.

Q. And you did something else, and recently you have——

A. Gone into it again.

Q. —gone into the business again. Now, are you acquainted with the 45- and 4600 blocks on Labadie avenue?

A. I am.

Q. Do you know a family of colored people named Penny who used to live in that block?

A. Yes, sir.

Q. How long have you known them?

A. I have known them for years; they are distant relatives of mine.

Q. Did you visit them in the block?

A. I did.

Q. What place, where did they live?

A. They lived at 4606 Labadie.

Q. 4606 Labadie; and how long did they live there?

A. They lived there approximately from 1937 to some time in June, 1944.

[fol. 87] Q. And do you know any other colored people who lived in that block?

A. I knew Miss Ward, now Hicks, who I went to school with; I lived next door to her in south St. Louis. She lives at 4614 Labadie.

Q. She is a colored teacher?

A. She is a colored teacher.

Q. The Penny's are colored?

A. The Pennys are colored.

Q. Do you know Miss Sarah Young?
A. I know of Miss Sarah Young.
Q. You don't know her?
A. I don't know her personally.
Q. Next door to 4614 is -10.

The Court: -14 is next to -10?
Mr. Vaughn: Next to -10, yes, sir.

(A certificate of title to 4600 Labadie is marked "Dft's Ex 1"; it is not included in this record.)

The Court: Do you know whether or not there is a 4602?

A. No, sir; I don't.

Mr. Vaughn: Some of those streets and numbers don't run.
The Court: There isn't?
Mr. Vaughn: I don't know. I was out there this morning.
The Court: Next to the 4600 is 4604, then?
Mr. Vaughn: 4604, I really don't know.
Mr. Seegers: I didn't offer these in evidence; these are the lists of registration. It shows 4600, 4604, 4606, then 4608, then 4610, then '14.
Mr. Vaughn: It wouldn't be competent, because the people at the other places didn't register, you know.
The Court: No; I know.

Q. I show you, Mr. Bishop, what has been marked as defendants' exhibit 1, and ask you what that is.
A. Copy of certificate of title. (He reads it to the Court.)
Q. Now, is that the certificate of title, the copy you had when you closed that deal?
A. That's the copy I had.

The Court: Do you know whether or not that's 4600 Labadie?

A. That's 4600 Labadie.

[fol. 88] Mr. Vaughn: I want to read from this certificate, your Honor.
The Court: Can't you just offer it and let me look at it?
Mr. Vaughn: I haven't read it yet. (Handing it to the Court.)
The Court: All right. It says, "restrictions as reported in said certificate." Have you got that certificate here?

Mr. Vaughn: No, your Honor; but here is what it says down there. Right there; the close down there.

The Court: Well, it states, "restrictions as reported in said certificate." If there is any certificate, that's merely a supplement to the certificate. The incumbrances have been released, but I don't think that means restrictions, if there any reported on the certificate, that is.

Mr. Vaughn: Well, I offer this in evidence.

Mr. Seegers: If the Court please, I wish to make objection to that into evidence, for the reason it's obviously a copy, it isn't the best evidence; incompetent.

The Court: The objection that it is a copy will be well taken, unless we have some proof it is a carbon copy.

Mr. Vaughn: Your Honor, this is what Mr. Bishop settled the deal with, not the original of this. That is his testimony.

Mr. Seegers: I withdraw the objection.

The Court: Is that so, did you have that?

A. I had that particular paper.

The Court: Did you have the certificate?

A. I did not; that's the only thing I had.

The Court: All right. I didn't understand that.

Mr. Vaughn: And I desire to read from this. (He does.) I want to make this statement, first; hardly one certificate in a hundred that sets out restrictions as of record; that's what they say.

Mr. Seegers: I object to that and ask it be stricken. I have the original certificate under subpoena and have seen it.

The Court: Well, if the original certificate in this case shows restrictions, that's what we have to be governed by.

Mr. Vaughn: Certainly.

Q. But this is the only thing you had?

A. That is the only thing I had.

Q. Is it unusual to settle, to carry through a deal——

[fol. 89] A. No, it isn't.

Q. —on a certificate furnished by the title company?

A. No, it isn't.

Q. Mr. Bishop, for how many years have you been acquainted with the locale there, blocks 4500 and 4600 Labadie avenue?

A. Oh, for some 23 years or more.

Q. Now, during all that time have you seen colored people living in the block, those blocks?

A. I have.

Q. Did you have any knowledge that there were any restrictions on the property in that block?

A. I had no knowledge whatsoever.

Mr. Vaughn: All right. Take the witness.

Cross-examination.

By Mr. Seegers:

Q. Mr. Bishop, you handled the sale of this property on September the 11th, 1945?

A. I handled the sale of 4600 Labadie avenue.

Q. And did you consummate that sale on September 11, 1945?

A. As to the definite date I am unable to answer.

Q. All right. Whom did you represent in the transfer?

A. I represented J. D. Shelley and his wife.

Q. The purchasers?

A. The purchasers.

Q. Who represented the seller?

A. I also represented the seller.

Q. You represented the seller?

A. Mrs. Fitzgerald.

Q. Did you know Mrs. Fitzgerald prior to this date?

A. I know Mrs. Fitzgerald through our office; I became acquainted with her through the E. M. Bowers Real Estate Company.

Q. In connection with what transaction?

A. In connection with 4600 Labadie.

Q. And had you known her prior to your negotiations on 4600 Labadie?

A. Through the E. M. Bowers Real Estate Company.

Q. That's what I mean. How long had you known her?

A. That I would be unable to state.

[fol. 90] Q. Well, would it be a year?

A. I dare say a year.

Q. Would it be more than a year, you think?

A. It would be less than a year.

Q. Less than a year. Can you tell us under what circumstances you first met her, became acquainted with her?

A. The circumstances as through this particular transaction, some time before the transaction occurred.

Q. Well, about how long before?

A. Oh, I don't—I wouldn't be able to say definitely.

Q. Mr. Vaughn asked you if you knew Miss Fitzgerald or Mrs. Fitzgerald prior to this particular deal. Did you?

A. No, not prior to the consummation; it was during the forming of this particular deal I became acquainted.

Q. You mean by that, sir, the negotiations leading up to this transaction had gone over a period of close to a year?

A. No, I didn't make that statement.

Q. Well, I am asking you: is that true?

A. I didn't say I had known Mrs. Fitzgerald a year.

Q. How long have you known Mrs. Fitzgerald?

A. I learned of Mrs. Fitzgerald through the Bowers Company in connection with this particular deal.

Q. I asked you how long did you know the lady.

A. That I wouldn't be able to say; I would have to trace back.

Q. I want to know how long you had known her and the circumstances under which you became acquainted.

A. I told you through the consummation of this deal, through the E. M. Bowers Real Estate Company.

Q. That's the only transaction you have handled in which Mrs. Fitzgerald has figured?

A. Definitely so.

Q. Have the negotiations leading up to this transfer been going on for some time prior to September, '45?

[fol. 91] A. Not—if September 11 is the closing date they hadn't been going on for long.

Q. About how long?

A. That I would be unable to say.

Q. Would it be 2 weeks?

A. Would it be 2 weeks, no, sir.

Q. Would it be less than 2 weeks?

A. I would say it wouldn't be less than 2 weeks; no, sir.

Q. Would you say it would be as long as 6 months?

A. Definitely not.

Q. Well, between 6 months and 2 weeks; would it be 4 months?

A. I don't know.

Mr. Vaughn: The best of your judgment how long, Mr. Bishop?

A. I imagine a couple weeks; somewhere around a couple, 2 or 3 weeks.

Q. Do I understand you to say now you had only known Mrs. Fitzgerald for 2 weeks prior to the closing date of this deal?

A. Approximately in that time.

Q. That's the entire period during which you have known her. Is she a white woman or colored woman?

A. White, so far as my knowledge is concerned.

Q. How did you happen to get in touch with her concerning this deal?

A. Through the E. M. Bowers company, the firm which I am employed by.

Q. Did you have the property listed for sale?

A. No.

Q. Did you have it listed for purchase?

A. The property was for sale by another agency.

Q. What other agency?

A. By the Brune Realty Company.

Q. The property was for sale by the Brune Realty Company?

A. Yes.

Q. And you ascertained that fact, did you?

A. I saw the sign.

Q. And then will you please tell us from the time you first saw the sign, what happened, to the point of actual transfer?

[fol. 92] A. I contacted Mrs. Hackman, the Hackman Realty Company, to investigate and see what the property could be bought for.

Q. Why did you contact Miss Hackman?

A. Because of the fact I had had conversations and in some previous dealings with Mrs. Hackman.

Q. About this property?

A. No.

Q. At the time you called Mrs. Hackman did you know that she had anything or that she had nothing to do with this property?

A. No; I called Mrs. Hackman through; I was interested in locating a flat for a particular client, and I called her.

Q. This particular client to whom you just referred, the Shelleys.

A. The J. D. Shelleys, they were.

Q. In other words, you were looking for a flat to buy for the Shelleys?

A. Definitely so.

Q. And you called Mrs. Hackman to find a flat for the Shelleys?

A. No; I called Mrs. Hackman on another deal that she had where she was seller, and then through this I asked her what she could do with this flat, buy it in for me for.

Q. But you called her in for one purpose and then, during the course of the conversation, you asked Mrs. Hackman to see if she could buy 4600 Labadie for you?

A. That's it.

Q. So you could sell it to your client Mrs. Shelley?

A. That's it.

Q. That's how Mrs. Hackman came into it: is that right?

A. That's right.

Q. Then what happened?

A. Nothing other than I secured the property through Mrs. Fitzgerald, a straw party, which I found that using a straw party, especially a white, my previous case using a white straw party has been an advantage to me in financing.

Q. Will you explain what you mean by that statement, if you please?

A. Well, I bought 1238 north Obert, a 4-family flat, about [fol. 93] a year ago through a straw party, and I was enabled to secure a much larger first deed of trust than I would have been able to do at the present home on Garfield.

The Court: I understand what you mean: it's easier to finance?

A. Yes, easier to finance through white. That's common knowledge.

Q. You mean if property is owned by a white person it's easier to finance it?

A. White can secure larger loans, better loans. I have a 5% loan.

Mr. Vaughn: Well, now what do you mean——

Mr. Seegers: If the Court please I would like to cross examine him.

The Court: Judge, please don't interrupt; we are very late as it is. We know what he means by that; a white persons owns it, they can get bigger loans, or straw.

Q. Did Mrs. Fitzgerald make a loan on this property?

A. Mrs. Fitzgerald did not.

Q. Did the Shelleys make a loan on it?

A. They did.

Q. Well, the fact that Mrs. Fitzgerald, a white person, acted as a straw party didn't have any effect on the loan, did it?

A. I said generally that's my practice.

Q. And that's why you did it?

The Court: Who is Josephine Fitzgerald? Is she connected with one of these companies?

A. No; she is a straw party, Judge, your Honor; I learned of her through the E. M. Bowers company. I first came in contact with her through E. M. Bowers.

The Court: All right. You took title in her name thinking you could finance the property better before she conveyed to the Shelleys, without putting a deed of trust on the property?

A. That's the idea.

Q. Do you say Mrs. Fitzgerald has acted as straw party for the Bowers company on previous occasions?

A. No, sir; I didn't say that.

[fol. 94] Q. Well, when you were asked by the Court, did you say she was a straw party?

A. In this particular and only transaction.

Q. But how did you happen to secure her to act as straw party?

A. Through the E. M. Bowers, the company with which I am employed.

Q. Would you mind telling us what you mean? How did you learn of her through the E. M. Bowers Real Estate Company?

Mr. Vaughn: What difference would that make? It's all gone over.

Mr. Seegers: I think it's important, your Honor.

The Court: Very well. Tell us who told you about her.

A. Mr. Bowers told me about her.

Q. You asked Mr. Bowers who would act as a straw party in this deal?

A. That's it.

Q. And he told you Mrs. Fitzgerald: is that right?

A. That's right.

Q. Were you in court yesterday when Mr. Bowers testified?

A. I was.

Q. Did you hear him testify that he never had any previous transactions with Mrs. Fitzgerald?

A. I don't recall all of the statements; I didn't write them down.

Q. Do you recall that particular statement?

A. I don't recall that particular statement.

Q. But it was Mr. Bowers who told you Mrs. Fitzgerald would act as straw party in this deal?

A. Yes.

Q. All right. So that you were representing Mrs. Fitzgerald, then, when you purchased, were you not?

A. Yes.

Q. Did you negotiate with Mr. Paulis for the sale of that property from Paulis to Fitzgerald?

A. Mrs. Hackman handled that transaction.

Q. Mrs. Hackman represented you, then?

A. She did.

Q. And she procured the deed from Paulis to Fitzgerald?

A. Right.

Q. And you had previously chosen Fitzgerald as straw party?

[fol. 95] A. Correct.

Q. And then the day after the deed was made to Fitzgerald, you had Mrs. Fitzgerald deed to the Shelleys: is that correct?

A. I am not sure as to the limit of time to Paulis; that is a minor transaction.

Q. Where was the signing of the deed from Mrs. Fitzgerald to the Shelleys; where did that take place?

A. If I am not mistaken, it occurred in A. M. Bowers Realty.

Q. In Mr. Bowers' office?

A. If I am not mistaken.

Q. Did Norah L. Evans act as notary?

A. If I am not mistaken she did.

Q. Were you present at the signing?

A. No; I wasn't present at that signing.

Q. Who was present at that signing, if you know?

A. I would be unable, because I wasn't present.

Q. Did you have somebody else handle that for you?

A. No more than the office; the office carries forth that regular routine.

Q. You didn't see the deed signed?

A. Not from Paulis to Fitzgerald.

Q. No; I am talking about the signing from Fitzgerald to the Shelleys; where did that take place?

A. That occurred in the office, E. M. Bowers.

Q. Were you present at that?

A. I was present at the last part, closing of the transaction.

Q. I am trying to limit it to the actual signing of the deed from Fitzgerald to Shelleys; were you present?

The Court: Were you present at the signing of the deed?

A. No, I wasn't present when she signed it. But I saw the acknowledgments of it. But I wasn't present at the signing.

Q. Did you have someone there present representing you?

A. No, no more than the office force. Mrs. Evans works in the office.

[fol. 96] Q. She took care of that?

A. She took care of that.

Q. Did you bring Mrs. Fitzgerald to the office for that particular purpose?

A. No, I didn't.

Q. Did you have anyone bring her?

A. No, I didn't have anyone bring her.

Q. Did you notify her to come to the office for that?

A. She was notified.

Q. Did you notify her?

A. She was notified through our office; what individual they used I don't know.

Q. Did you notify her, Mr. Bishop?

A. I personally didn't notify her.

Q. You informed the office, instructed someone in the office to have her come down and sign the deed: is that correct?

A. That's right.

Q. You weren't present when she came in to sign; you didn't see it signed?

A. No. I saw it after it was signed, though.

Q. No, you didn't see it signed. Now, you have testified that a period of approximately 2 weeks occurred between your first meeting Mrs. Fitzgerald and the signing?

A. I didn't say meeting; I said learning of Mrs. Fitzgerald.

Q. When did you first meet her?

A. I first met Mrs. Fitzgerald some time ago, I don't know—I would be rather vague as to when I first met her.

Q. Was it a longer period than 2 weeks?

A. No, definitely not.

Q. It was within that 2 weeks period?

A. Yes.

Q. When was the occasion you first met her?

A. In connection with this particular deal.

Q. Where was—where did that meeting take place?

A. I learned of her—here's my statement: I learned of Mrs. Fitzgerald through the office.

Q. Mr. Bishop, you must have met Mrs. Fitzgerald at some time. Will you please tell us where it was you first met her?

[fol. 97] A. I met Mrs. Fitzgerald here, well, just recently here in the room, so far as the meeting is concerned.

A. You mean in this court room?

A. Or the outside of the court room.

Q. Yesterday was the first time you ever met her?

A. The first time.

Q. You had never seen her before yesterday?

A. No.

Q. Well, how did you procure her acquiescence or permission or agreement to act as straw party in this deal?

A. Through the office, I have told you; through Mr. Bowers.

Q. You didn't make the contact with her yourself?

A. No, I didn't make the contact.

Q. Had you ever talked to her personally before yesterday?

A. No.

Q. But you had her secured through the office to act as straw party in the deal?

A. That's right.

Q. Did you know prior to the closing of this deal that Mrs. Hackman had secured Mrs. Fitzgerald's name on an earnest money contract?

A. Yes.

Q. Who told you that?

A. I received information through the office; in fact, I presented the earnest money to Mrs. Hackman, and later received the contract in the office for Mrs. Fitzgerald to sign.

Q. In what office?

A. A. M. Bowers.

Q. You received the contract money in Bowers' office for Mrs. Fitzgerald to come in and sign?

A. That's it.

Q. But you didn't see her sign?

A. No.

Q. You didn't personally see her?

A. I gave an earnest money receipt to Mrs. Hackman for the money.

Q. And the earnest money receipt you got was furnished by Mrs. Hackman?

A. Signed by Mrs. Hackman.

[fol. 98] Q. Who furnished that money?

A. The company; I furnished the company.

Q. Out of your own pocket, you mean?

A. I consider when I take it out of my own pocket I furnished the money.

Q. You didn't get it from Shelleys?

A. No; I didn't get it from Shelleys.

Q. Did you have any conversation with Mrs. Hackman with respect to the title of the property prior to the confirmation?

A. I asked Mrs. Hackman to send—she suggested that clos—Mrs. Hackman said to me that the title had recently been run by the Paulis', and maybe I could save some money, but I said I preferred running the title; and that's the copy that she sent me.

Q. This is dated the 22nd of August, 1945.

A. That's the copy Mrs. Hackman sent me, the only copy our office has.

Q. When did you get this from Mrs. Hackman?

A. I got it through the mail; as to the date I am unable to state.

Q. You don't know what date?

A. No, I don't.

Q. Was it prior to the confirmation of this deal?

A. Definitely.

Q. How long prior?

A. I would be unable to say because I don't keep those dates; it was a week or a few days, anyway.

Q. Mr. Bishop, it isn't my intention to argue with you; I merely want to fix the time, the date. This is August 22nd, 1945; the date you closed the sale was September 11th, so that you must have received this between the 22nd of August and the 11th of September. Is that correct?

A. That's correct.

Q. Now, does that refresh your memory as to how far or close to either of those dates you received this?

A. No, it doesn't, because we have a number of other deals, and I don't just put down——

The Court: Just answer, sir; don't make a speech about it.

A. No, it doesn't, no.

Q. Do you know, Mr. Bishop, that Paulis executed a [fol. 99] deed to Fitzgerald on September 10th, 1945?

A. As far as to the best of my knowledge, I did.

Q. And do you know Mrs. Fitzgerald executed a deed to the Shelleys on September 11th?

A. As far as my knowledge I do.

Q. Those two transactions occurred within a day of each other. When those transactions, and both of them, occurred did you have this in your possession?

A. The office had it; we had it in our office.

Q. Did you have it in your possession?

A. In my own personally, I don't know, but I knew I looked at it.

Q. Prior to that time you had looked at it?

A. Yes.

Q. So you had this in your possession, you knew and had read it prior to the transfer from Paulis to Fitzgerald and Fitzgerald to Shelleys. Now, when you got it did you read on here these words: "restrictions as reported in said certificate"?

A. I read that.

Q. Did it mean anything to you?

A. It did, but perhaps not in the sense you are trying to infer.

Q. I am not trying to infer anything, Mr. Bishop. Did it mean anything, is all I asked you.

A. I asked for a copy.

Q. Tell us what it meant, if anything, to you.

A. Any other title, I have seen other titles——

Q. Just a minute. If you will answer yes or no, answer it; and then if you have an explanation to make, make it, and we will get on.

The Court: It will be better if you do that.

A. All right, sir.

Q. Do you remember the last question, Mr. Bishop?

A. Will you kindly repeat it, please?

Q. I believe I asked you what this statement on defendant's exhibit 1 meant, "restrictions as reported in said certificate"; when you read that what did it mean to you?

Mr. Vaughn: You asked him if it meant anything.

[fol. 100] The Court: He answered that; he said yes. Now ask what it meant.

Q. What did it mean to you?

A. It meant the same thing as anywhere where it says no restrictions, and so forth. Perhaps I should have glanced over that a little more seriously than I should have ordinarily.

Q. You mean when you read the words "restrictions as reported in said certificate", that meant there were no restrictions?

A. It meant to me what it reported in that particular certificate there; I didn't see any restrictions, so I passed it up.

Q. You didn't check back on the title?

A. No; I didn't check back on the title, she——

Q. Did you ask——

A. —sent me that as a copy.

The Court: Please wait 'til he finishes his question; the reporter can't get it when you both speak together.

A. I am sorry, your Honor.

The Court: Don't interrupt him when he asks a question.

Q. Did you ever ask Mrs. Hackman for the rest of the title?

A. No, sir.

Q. Did you discuss with anybody else in the Bowers Real Estate Company this statement, "restrictions as reported in said certificate"?

A. No, sir.

Q. Why didn't you, Mr. Bishop?

A. They didn't impress me as needing to be, because I asked for a copy of the title and took for granted that was a copy of the title.

Q. Do you have a college degree, Mr. Bishop?

A. No, sir; I don't.

Q. Did you finish your schooling?

A. I did.

Q. Do you have any college education at all?

A. Some.

Q. How much?

A. Oh, a year or so.

Q. A year or so; so that when you read the words "restrictions as reported in said certificate" you thought it referred to these same pieces of paper?

A. I did.

Q. And because there was nothing further on these pieces of paper——

A. There wasn't any judgments.

Q. You didn't discuss it with Mr. Bowers or anybody else?

[fol. 101] A. No, sir.

The Court: He answered that; he said he assumed that was a full certificate, didn't ask for the other on that account.

Q. Did you discuss with Shelleys at the time of the transfer or deed, restrictions on that property?

A. No, sir.

Q. Did you tell them that the property wasn't restricted?

A. I have no reason to tell them of anything.

The Court: Oh, please answer; did you tell them?

A. No, I didn't.

Q. Did you tell them it was restricted?

A. I did not.

Q. Now, on the face of defendant's exhibit 1 appears this statement: "Deed of trust recorded in book 6337, page 379, as reported in said certificate." Did you ascertain what deed of trust that was being referred to?

A. Mrs. Hackman had previously told me of it, so it wasn't necessary. Had previously told me about this particular deed of trust.

Q. Did you ascertain the amount of that deed of trust for your own purpose?

A. She told me about the amount of it.

Q. You got that information from Mrs. Hackman?

A. From Mrs. Hackman.

Q. Did you find out the payee or trustee in the deed?

A. There are certain details we leave to the office.

Q. To which office?

A. To our office.

Q. Did your office check that?

A. I think so; I am ~~not~~ sure.

Q. Well, did they check it, Mr. Bishop, because it says on the face of defendants' exhibit 1 "deed of trust recorded in book 6337, page 379, as reported in said certificate"; is that why you interested yourself in getting more information about the deed of trust?

Mr. Vaughn: I object to that; the question assumes something not testified to.

Mr. Seegers: He testified he got the information about the deed of trust from Mrs. Hackman.

The Court: What is your question?

[fol. 102] Mr. Seegers: I asked him if he and his offices assume to get all of the details about the deed of trust, why do you put this statement on defendant's exhibit 1 that there was a deed of trust as recorded in said certificate.

The Court: Well, I hardly know what you mean. There is a deed of trust reported on the certificate; you ask him if that's the reason why he inquired about it.

Mr. Seegers: This isn't a certificate, your Honor.

The Court: Well, that supplemental certificate.

Mr. Seegers: It refers to a certificate, and the witness testified, with respect to the restrictions, he didn't look for one certificate because he thought this was it. Now, if he says now, as I am trying to bring out, that he checked into this deed of trust because this deed of trust was reported in this certificate——

The Court: That is your argument.

Mr. Vaughn: His question was so involved that it is very difficult for the man to testify. He got the information from Mrs. Hackman.

The Court: I understand the supplemental certificate he has there refers to a deed of trust; isn't that so?

Mr. Seegers: This piece of paper——

The Court: Refers to a deed of trust.

Mr. Seegers: —which is a copy.

The Court: Very well. It refers to the deed of trust? Please answer my question.

Mr. Seegers: Yes, your Honor; it refers to a deed of trust.

The Court: And you asked him if that is the reason why he inquired of Mrs. Hackman about the deed of trust?

Mr. Seegers: I asked him if the statement on this piece of paper made him do it.

The Court: That's what I say: because that piece of paper says so, did you ask Mrs. Hackman about the deed of trust.

Mr. Seegers: I am sorry; my question, because of this discussion, your Honor, has lost all its purpose. I withdraw it.

Q. Did you personally check the records of the recorder of deeds with respect to this deed of trust?

A. I did not.

Q. Has that deed of trust ever been paid off?

A. Not to my knowledge.

Q. Has it been assumed by the Bowers-Shelley?

A. It has.

Q. Do you know of your own knowledge whether they [fol. 103] executed notes to be secured by the deed of trust mentioned in defendant's exhibit 1?

A. Not that I know of.

Q. Did they execute an additional deed of trust covering this property?

A. They did.

Q. And executed notes?

A. They did.

The Court: You mean a second deed of trust?

A. A second deed of trust; yes, sir.

Q. Did they have any cash when they purchased this property?

A. Yes, sir; they did.
Q. Who did they pay it to?
A. They paid it to our office, to me.
Q. What did you do with it?
A. Turned it over to the office; I am only a salesman.

The Court: To your office? What did they do with it?

A. I don't pay attention to all the office does; I am only a salesman, your Honor.
Q. You don't know what the office did with it?
A. No more than I know Shelleys executed the notes. I saw the Shelleys when they executed the notes, I saw them when they paid the money and when they got their final contract, and know when they took the final papers. Outside of that I don't know.
Q. Were you present yesterday when Mr. Bowers testified?
A. Yes, sir; I was.
Q. Did you hear him testify he didn't have anything to do with this deal, that you handled it all?
A. I don't recall the exact statements of Mr. Bowers.

The Court: Well, it doesn't make any difference what he testified to, sir. If he testified contradictory to this witness, when—the record speaks for itself.

Q. Did Mr. Bowers personally handle the payment of this money over to the seller, do you know?
A. Just what do you have reference to, may I ask?
Q. The cash payment which you testified was made by [fol. 104] the Shelleys was paid to you, then you turned it over to the office, and that's the last you know of it, you say. Do you know of your own knowledge, whether Mr.——
A. Now, wait; may I say this?
Q. Yes.
A. A part of the payment that Mr.—that the Shelleys paid in was profit on the deal, and of course I received part of that as my part, as profit.

The Court: Well, how much did they pay? How much cash did the Shelleys pay?
A. They paid $800.
The Court: They paid $800 in cash. What did you do with that $800, now?
A. Part of it went to the office.

The Court: Never mind.

A. All of it went to the office and out — our check I was paid my portion.

The Court: It went to the office?

A. Yes.

The Court: That's what you did?

A. That's what I did; and I was paid my portion.

The Court: Do you know what the office did with the balance?

A. No, sir; I don't.

The Court: Who was it handled that part of the transaction?

A. The office, that's in.

The Court: Well, who?

A. Mr. Bowers.

The Court: Very well.

Q. You say there was profit made on the deal; do you mean commission on the sale, or profit in buying and selling the property?

A. I mean profit in buying.

Q. You mean profit in buying it?

A. Yes.

Q. Do you mean by that, Mr. Bishop, that you actually bought that property yourself for speculation?

A. I bought it from Mrs. Fitzgerald, that is in connection with my, I knew that these parties were in the market for a piece of property.

[fol. 105] Q. Let's get that straight, if you please, sir. When you bought this piece of property by contacting Mrs. Hackman and arranging to have a title, deed, given to Mrs. Fitzgerald and paid the money out of your own pocket, were you by those activities intending to buy that property for yourself for resale?

A. Definitely so.

Q. All right. Now, Mrs. Fitzgerald was then holding the property for you, was she not?

A. Mrs. Fitzgerald simply acted as a straw party.

Q. For you?

A. For me.

The Court: For you personally, now.

A. For me personally.

Q. You bought the property and then you sold it to the Shelleys; is that right?

A. That's right.

Q. But you had no sale through a straw party?

A. That's it.

Q. Did you make a profit on that deal?

A. From the straw party to Shelleys?

Q. No; from you to Shelleys.

A. Well, the transaction is from the straw party to Shelley.

Q. Well, that's the way the title went; but you testified Mrs. Fitzgerald was holding for you, and that was your profit.

A. That was the profit in the transaction.

Q. How much did you pay for the property? What was the purchase price that you paid for it?

Mr. Vaughn: If the Court please, I object to that; I don't see that has anything to do with the matter here.

The Court: Overruled.

Q. What was the purchase price that you paid for the property, totally?

A. Oh, if I recall, somewhere around 47-, something like that.

Q. Around 4700?

A. Around 4700.

Questions by the Court:

Q. You don't mean you paid it; you agreed to pay it. Is that the idea?

A. No; that was actually paid.

[fol. 106] Q. Well, Shelleys paid you the money; you hadn't paid out any before that, had you?

A. I paid my earnest money prior to Shelley and negotiated the papers prior to Shelley.

Q. The earnest money had been paid, but that's all the money you paid; you paid earnest money and took the title in the name of Josephine Fitzgerald;——

A. Fitzgerald.

Q. —is that right.

A. That's right.

Q. And that deed to Josephine Fitzgerald was on the 10th day of September?

A. As far as I can recall.

Q. And the very next day Josephine Fitzgerald conveyed to the Shelleys. Did you have the Shelleys as purchasers; I mean at the time had the Shelleys spoken to you about buying this property?

A. Yes, sir.

Q. Or had you spoken to them?

A. I had spoken to them about buying this property; yes, sir.

Q. Before you bought it yourself?

A. Before I bought it myself, before the transaction, and before this the Shelleys, I had been in that particular neighborhood looking around.

Q. I understand; but I mean you had spoken to the Shelleys about buying the property?

A. Yes, sir.

Q. Did you represent the Shelleys as their agent in buying the property?

A. Yes, sir.

Q. And then you buy the property yourself first, and then you sell it to the people whom you represent as agent of the property; is that right?

A. Yes, sir; I did. That's what I did.

Q. How much profit did you make?

A. My part was, oh, a few hundred dollars.

Q. Don't you know that an agent owes loyalty to his clients and is not supposed to buy property in his own name and then turn it over to his clients at a profit?

A. Well, your Honor, that's some of the practice of the real estate, I mean the real estate business; your Honor, I didn't make much, not considerable, but that's what I did, your Honor.

[fol. 107] Q. You don't buy the property as cheap as you can for your clients, then?

A. Often times I do, but in this particular case it was a very reasonable price, your Honor.

The Court: All right.

Mr. Seegers: Mr. Bishop, what was the sale price of the property when it was sold to the Shelleys?

A. Oh, I think 57.

Mr. Seegers: So there was a clear $1,000 profit in this deal?

A. No; there was cost of financing in there.

Mr. Seegers: Well, how much did that amount to, do you say?

A. That amounted to around in the neighborhood of $300.

Q. You mean to say you bought this property for 4700 and sold it to Shelleys for 5700?

A. Approximately that; I am telling you the price, you asked for it, your Honor.

Q. Are you aware you owe the Shelleys a thousand dollars?

A. No, sir; they didn't have enough money to pay the price.

Q. How much was the first deed of trust?

A. $3250.

Q. And the second was how much?

A. The second I don't recall; I think it was 17, around 17.

(Colloquy. Court and counsel.)

Mr. Seegers: I think this cross examination ought to be permitted to be continued.

The Court: You may continue it, but don't go over the same ground.

A. Well, your Honor——

The Court: He has confessed here that in absolute disregard of his obligations and duties to his client he goes out and buys the property for himself for 4700 and turns it over to them for 5700.

Mr. Vaughn: All well and good, your Honor, but that isn't the issue here.

The Court: I know it isn't the issue.

Mr. Vaughn: If the cross examination goes to the issue, that's all right.

The Court: It affects his credibility, at least.

[fol. 108] Mr. Vaughn: That's right; there's no doubt about that. Even then I think there's a limit to the examination.

The Court: Well, proceed; ask your questions. Don't let's cover the ground you have already covered.

Mr. Seegers: I will try not to.

Cross-examination continued by Mr. Seegers:

Q. How much of that $1,000 profit did you personally get?

A. Sir, it wasn't a thousand dollar profit.

Mr. Vaughn: If the Court please, against the Court's admonition he is going right over the very thing that has been answered. The man said he got around $300.

The Court: He must have got more than that if there was a thousand dollars. The second deed of trust didn't cost him $700 to finance.

Mr. Vaughn: He testified he only got a part of a part of it. I suppose that he split commissions with the office.

A. The office.

The Court: All right; let's not go over that again. How much he got is immaterial.

Mr. Seegers: If your Honor please, I am sorry that I have to disclose the strategy of my cross-examination before I conduct it.

The Court: Well, you can come up here if you wish.

(At the bench)

Mr. Seegers: Well, Mr. Bowers has testified he didn't handle any part of this, that the office didn't make any money out of it.

Mr. Vaughn: I beg your pardon. Mr. Bowers said the office did.

The Court: Well, whether he got $300 or $400 doesn't make any difference; his credibility is affected by the fact that he took any profit at all.

Mr. Seegers: Paying Mr. Bowers also.

The Court: Well, let's not go over the same matter now.

Mr. Vaughn: They do it all over town, your Honor; that's the practice.

The Court: I hope that isn't so.

(Counsel return to their places.)

Q. Mr. Bishop, was the reason for the price of $5700 to the Shelleys because it was enabling them to buy a piece of [fol. 109] restricted property?

A. No, sir.

Q. It was just a normal profit in a real estate deal; is that correct?

A. I wouldn't say normal.

Q. Well, I mean it was the normal deal as far as you were concerned?

A. It was a deal, real estate deal.

Q. You are familiar with real estate values in that neighborhood, are you not, sir?

A. I am; I know the values as sold to colored.

Q. You think you could have sold that property to a white person for $4700?

A. I don't contact white clients in small matters of that kind, so I would be unable to answer that question.

Q. You are unable to answer that question. From your knowledge of values of real estate in neighborhoods like 4600 Labadie, is it or is it not true that colored people paid more for the same property than white people?

A. That's definitely, that they pay more for the same property as whites.

Q. Is it a deal like this that makes that necessary?

A. That property could have sold for $6500, would bring 6500 ordinarily, so the price was reasonable.

Q. You think it's worth $6500 today?

A. Yes, sir; if colored buy that they will buy it at approximately 65.

The Court: You think the Shelleys could sell that today for 6500?

A. At the time I knew nothing about restrictions.

The Court: I say, answer me: You think the Shelleys could sell that today for 6500?

A. Yes, sir; I do.

Q. Could they sell it to white people for 6500?

A. I don't know what whites would pay for it.

Q. But you state colored people would give 6500 for it; is that right?

A. That's right.

Q. Do you think they couldn't get that much if they sold it to white people?

A. I don't know what they could. I don't deal that way. [fol. 110] Q. I believe you testified during direct examination that you bought a piece of property at 1238 north Obert, and bought it through a straw party because it was easier to finance it that way: isn't that right?

(A pause.)

Mr. Vaughn: Please answer, Mr. Bishop.

A. Yes, sir.

Q. I believe you testified also you had only been back in the real estate business a few months?

A. Yes, sir.

Q. Was that purchase of that property on Obert a year ago part of the real estate transaction in which you were involved?

A. No, sir; I bought it through the Werner Realty Company, at the time I was employed at Curtis Wright.

Q. Did you buy that to live in it?

A. As an investment, and perhaps to live in it.

Q. Did you live in it?

A. No, sir; I didn't.

Q. But you held it?

A. I held it in exchange.

Q. But you weren't in the real estate business then?

A. I wasn't in the real estate business then.

Q. Mr. Bishop, one more question: did the fact that you and the office stood to make a thousand dollar profit out of this place——

A. I didn't make a thousand dollars.

Q. Wait a minute; let me finish the question. Did the fact you anticipated an increase of a thousand dollars between your sale price and the price to the Shelleys, did that fact have anything to do with your failure to check these restrictions further?

Mr. Vaughn: I object to the question; assuming something not in evidence here.

The Court: Well, answer that question; and then let's not proceed any further.

Did the fact you intended to make a profit on this have anything to do with your failing to check the restrictions?

A. No, sir; they didn't.

The Court: All right; that's answered definitely.

Mr. Seegers: I believe that's all.

[fol. 111] Redirect examination.

By Mr. Vaughn:

Q. Mr. Bishop, did the fact that you had been acquainted with the 2 blocks out there for a period of 15 or 20 years and knew colored people living out there, did that have anything to do with your not making inquiry about restrictions?

A. Yes, sir; it did.

Q. You relied on that?

A. I relied on that; I knew the folks had moved out and others had lived there, and didn't examine any restrictions.

Mr. Vaughn: That's all.

Recross examination.

By Mr. Seegers:

Q. You testified a minute ago under cross examination that you didn't check the restrictions because of what you saw in defendant's exhibit 1, that you understood there weren't any?

A. I understood that there weren't any restrictions, from my general knowledge of the neighborhood.

Q. That, coupled with the fact that there were Negroes living in the neighborhood, to your knowledge, both of those things combined together to cause you not to check on any instructions?

A. That there weren't any there.

The Court: Did colored people ever live at 4600 do you know?

A. No, sir; not to my knowledge did any ever live at 4600 Labadie.

(Other witnesses heard; at 1:25 p.m. adjourned to 2:30, continuing at 2:45 p.m., then continuing with another witness (all such testimony omitted pursuant to stipulation herein), and adjourning on said October 19, 1945, to October 22, 1945, at 10 a.m., then continuing the hearing of said cause as follows.)

[fol. 112] Robert A. Bishop, resuming the stand, on 2nd redirect examination by Mr. Vaughn in behalf of defendants, testifies.

Q. Mr. Bishop, you have been sworn and testified before?

A. I have; yes, sir.

Q. I will ask you if after leaving here, the Court, on Friday, you looked up any of your records in this transaction either of the purchase of this property from Mr. Paulis or in connection with your selling of it to the Shelleys.

A. Yes, sir; I did.

Q. Mr. Bishop, I show you what has been marked defendant's exhibit 4, and ask you what that is.

A. A sales contract for 4600 Labadie together with all improvements thereon.

Q. Dated when?

A. This dated August the 4th, 1945.

Q. Signed by whom?

A. Signed by Oscar Paulis, agent.

Q. And for whom?

A. Josephine Fitzgerald.

Q. Josephine Fitzgerald. Now, where did you get this?

A. Mrs. Hackman sent me this.

Q. No; I ask you where you got it since you went away from the Court.

A. Oh, I looked it up at the office.

Q. And got it?

A. Yes, sir.

Q. Now, when was the last time you saw that before you came in here to testify.

A. I guess perhaps some time in August is the last time.

Q. Now, I show you what has been marked as plaintiff's exhibit S, and ask you to state whether or not those are duplicates of each other.

A. The difference is a matter of earnest money, but other than that they are similar. I mean commission; commission. Difference in a matter of commission.

Q. Difference in a matter of commission?

A. Yes; other than that they are the same.

Q. They are the same. In other words, this is the same contract, exhibit 4?

A. Let me see that again, please; pardon me, before I [fol. 113] answer your question.

Q. Look them over and satisfy yourself, will you?

A. Yes. (Examining them) Yes, sir.

Q. All right. Exhibit 4 is the same contract as the plaintiffs' exhibit S?

A. Yes, sir.

Q. With the exception that plaintiffs' exhibit S contains a commission of $200?

A. Yes, sir.

Q. Now, then, Mr. Bishop, I ask you if, after you looked up this earnest money contract, the sales contract, if that refreshed your memory with reference to any of the details of this deal.

A. Yes, sir; it did.

Q. Now, in view of having done that is there any explanation which you desire to make to the Court, or any

correction of any testimony which you gave to the Court the other day that you desire to make?

A. I would like to make this statement——

Q. No; just answer yes or no.

A. Yes, sir.

Q. All right. What is it?

A. I would like to make the statement that I paid the $200 to buy the property in the name of Fitzgerald, to Mrs. Hackman prior to my showing it, that is my showing it to Mrs. Shelley. Then at the——

The Court: You say you paid $200 to Mrs. Hackman?

A. Out of my own pocket, yes, sir.

Q. You put the money up?

A. Yes, sir.

The Court: Why did you pay her $200?

A. Why, that was necessary for this contract, your Honor; she required that as earnest money.

Q. That was earnest money?

A. Yes, sir.

The Court: Oh, that's different. I thought you said commission.

Q. That seems to be a mixup on commission and earnest money. What are you referring to?

A. Earnest money.

Q. All right; let's talk about commission from here on.

[fol. 114] A. $200 earnest money.

Q. Now, at that time you put that money up did you have a contract with the Shelleys to sell them this property?

A. No, sir; I didn't.

The Court: Well, had they spoken to you about buying any property?

A. I had shown them property in other areas.

The Court: You had shown the Shelleys——

A. In other areas.

Q. What other areas had you shown them property?

A. I had shown them property on north Garrison, I believe Coleman, and I don't remember but some 3 or 4 other pieces of property.

Q. Then I ask you, Mr. Bishop, how much cash money the Shelleys paid in on this deal.

A. The actual cash that they actually, oh, paid in was $600.

Q. What made up the rest of the $800?

A. A 3rd deed of trust of $200.

Q. And who furnished that money?

A. I furnished that money.

Q. You furnished that money?

A. I furnished that money.

Questions by the Court:

Q. You took a deed of trust?

A. That is, I didn't—I secured 200, I secured it for them.

Q. They executed 2 deeds of trust, a second and a third?

A. Yes, sir. I secured that $200 for them.

Mr. Vaughn: So of the $800 cash that was put up, that $800 acquired, with the earnest money receipt——

Q. You got the $200 back that you put up, that you gave Mrs. Hackman?

A. No, sir; I had to close the deal out with Mrs. Hackman before.

Q. I know; but you said afterwards the Shelleys put a 3rd deed of trust for that $200 on the property.

A. No. sir; that had no connection with it at all.

[fol. 115] Q. I thought you said they put up $600 in cash.

A. Cash, but we had to close the deal up with Hackman in $1400 cash, your Honor. It took $1400 more according to the contract.

Q. The Shelleys signed notes secured by a 2nd deed of trust for $1700, didn't they?

A. Yes, sir.

Q. And notes secured by a 3rd for $200?

A. Yes, sir.

Q. So they signed notes for $1900, didn't they?

A. Yes, sir.

Q. How much cash did they receive on those 2nd and 3rd deeds of trust?

A. For refinancing——

Q. No; how much cash was paid to the Shelleys for those?

A. That closed the deal.

Q. I want to know how much cash was paid them. Did you discount those deeds?

A. Oh, they discounted them 20 and 30%.

Q. 20 and 30%? Who owns those deeds of trust? Where did you sell them?

A. There's a Farr, I think, who has the 3rd; and the 2nd I don't know. I just know what details the office would handle.

Q. Did you get commissions on those deeds of trust?

A. No, sir; I didn't.

Q. Now, then the price paid to Mr. Paulis was $4650, wasn't it?

A. What does it say there?

Mr. Vaughn: Says 4650, subject to a first deed of trust, balance payable as follows: cash $1400, of which earnest money is a part.

Q. So the price was 4650, of which 3250——

Mr. Vaughn: 3250, your Honor.

Q. That left $1400; now the Shelleys paid $600 cash.

A. Yes, sir.

Q. So that left $600 out of the $14-, assuming they bought it direct from Mr. Paulis instead of through you.

A. Well, so far as being direct from Paulis, I bought the——.

Q. I understand that; I say that if they bought it direct [fol. 116] there would have been $800 still to secure after they put up their 600 and the first deed of trust. Now that could have been put on there a lot cheaper than the first and the cash and the third.

A. I didn't buy the property with the expectation of selling to Shelley, your Honor.

Q. You didn't buy it?

A. Yes, sir.

Q. Do you have a license of any kind from the real estate commission?

A. Yes, sir; I do.

Q. And does the Bowers Real Estate Company have a license from the real estate commission?

A. Yes, sir; they do.

Q. And today do the Bowers people know how you handled this transaction?

A. I don't know that they know all about it.

Q. Did they get a part of your profit?

A. Yes, sir; they did.

Q. Did Mrs. Hackman tell you she wouldn't sell this property to a colored person?

A. Mrs. Hackman said to me that she preferred to sell it to white.

Q. And you told her then Josephine Fitzgerald was white?

A. Yes, sir; I did.

Q. So then you put it in the name of Josephine Fitzgerald?

A. Yes, sir.

Q. How long was it after Josephine Fitzgerald received her deed that Josephine Fitzgerald deeded to the Shelleys?

A. That was the next day, your Honor. That was an earnest money contract.

Mr. Vaughn: I beg to call your Honor's attention to the fact that an earnest money contract is a sale, and the deed is merely a consummation.

The Court: I appreciate that; I am trying to find out what happened.

Q. So she told you she preferred to sell it to a white person?

A. Yes, sir.

Q. And you got Josephine Fitzgerald to take the title for you?

A. Yes, sir.

Q. Did you tell Mrs. Hackman she was taking it for you?

A. No, sir; I didn't.

[fol. 117] Q. You knew she didn't want to sell it to a colored person, didn't *she*?

A. She didn't make any definite statement; she just said she preferred to sell it, and we let it go at that, because I made a statement in court the other day it is far easier to secure loans through a white person than colored.

Q. I understand; but you didn't secure it.

A. Well, there's cases we did.

Q. But in this case you didn't?

A. This is one where we didn't have to.

Mr. Vaughn: When you bought this property through Mrs. Hackman did you intend to sell it to the Shelleys?

A. No, sir; I talked to my wife, and we thought we would live in it ourselves.

Q. Did you tell the Shelleys you had bought it for 4650 and were making a thousand dollars on it?

A. No, sir; I didn't make a thousand. You will find there's over $400 there ——

Q. I understand; that's on account of the deeds of trust being so much; but if they just sold it to them for 4600, as was their duty, they would have only put on a 2nd deed of trust for 800, which would have been far cheaper. The reason it was so heavy is because of the extremely large second deed of trust and third deed of trust.

Mr. Vaughn: I beg your pardon, your Honor; I am closing real estate deals a long time, and the large deed of trust is much harder to dispose of than a small one.

A. Your Honor, may I say this to you: that I actually had been offered 5500 cash, and I lost money selling it to the Shelleys.

The Court: Well, you can tell that to the Missouri Real Estate Commission.

A. I certainly will be happy to do that.

Mr. Vaughn: I believe that's all. Any questions?

Mr. Seegers: No questions.

Mr. Vaughn: I desire to offer this in evidence, defendants' exhibit 4, it being a description of the same property, to-wit, 4600 Labadie here, and to show that this contract was dated on the 4th day of August, 1945, more than a month prior to the time when the deed was given to Mrs. Fitzgerald and then transferred to these people. (This exhibit is omitted, pursuant to stipulation, pp. 22-30, hereof.)

[fol. 118] The Court: What is Mr. Bishop's name?

A. Robert.

Mr. Vaughn: Robert Bishop.

The Court: And he is still with the Bowers Real Estate Company?

A. Yes, sir.

The Court: And what is their address?

A. 3939.

The Court: 3939 what?

A. A Finney.

The Court: All right. That (exhibit 4) may be admitted, sir. Was there any further evidence?

Mr. Vaughn: You asked that the new owner, the defendant, come in.

The Court: Is she here?

Mr. Vaughn: I ascertained from Mr. Bishop that Mrs. Shelley handled the transactions, and she is here.

The Court: Have her take the stand.

ETHEL SHELLEY, a defendant, affirming that she would tell the whole truth, on direct examination by Mr. Vaughn in behalf of defendants, testifies.

Mr. Vaughn: Do I understand this witness is being put on by the Court?

The Court: Yes, sir; you may examine her at my request. If you will excuse me, I want to ask her one question.

Do you belong to some religious denomination that doesn't believe in taking an oath?

A. I don't believe in swearing.

The Court: You don't believe?

A. No; that's against my religion.

The Court: Now, you and Mr. Bishop belong to the same denomination?

A. He is my pastor.

The Court: He is your pastor?

A. Yes.

The Court: Very well.

Q. State your name.

A. Ethel Shelley.

Q. And what is your husband's name?

A. J. D. Shelley.

[fol. 119] Q. And where do you live, Mrs. Shelley?

A. 4600 Labadie.

Q. When did you move there?

A. Well, I moved there, I moved there, tomorrow will be 2 weeks ago. I moved the 9th *to the 9*th.

Q. You think it was the 9th?

A. It was the 9th.

Q. Has anybody served you with any papers, Mrs. Shelley, after you moved in that house?

A. I moved about 8 o'clock——

Q. 8 o'clock morning, or evening?

A. 8 o'clock in the morning, and afternoon, that evening, they brought some papers.

Q. Brought the papers?

A. Yes.

Q. Was that the papers——

A. Says what?

Q. Wasn't that the papers in this suit, this lawsuit?

A. Oh yes.

Q. Now, did you move on a Monday or a Tuesday?

A. I moved on a Tuesday, Tuesday morning. I was to move Monday, but I got disappointed; and early Tuesday morning I moved.

Q. Now, do you recall, Mrs. Shelley, when you first went to Mr. Bishop to ask him about buying real property, buying a home; not the exact date, but about when?

A. Well, it's some time in July.

Q. Some time in July. And how soon after that was it he began to show you property?

A. Well, he showed me some property.

Q. No; I ask you how soon after that was it he began to show you property?

A. Oh, yes; after he told me.

Q. Well, how soon after you went to him?

A. Oh, it was about—I reckon about, I don't know exactly but it was about a couple of weeks.

Q. And then where did he show you property?

A. Well, we looked at some property on Garrison avenue; Garrison and Glasgow.

Q. Did you look at any other place?

A. We looked at some property different places; I don't know exactly.

Q. Do you have any idea how many different pieces of property you looked at?

A. We looked at, let's see; well, I know Garrison and Glasgow, those is two places.

Q. Did you look at property on Coleman street?

A. Yes; Coleman.

Q. When was it, best of your recollection was it you first saw the property on Labadie avenue?

A. Well, it was some time in July.

[fol. 120] Q. You think it was in July when you saw that property?

A. In July or August, one.

Q. How long was it before you bought it?

A. Well, it wasn't so long before; I don't know exactly what time, but I know in August, that's when I put up my earnest money.

Q. I don't understand what you are saying.

A. I say in August, that's when I put up my earnest money; but it was some time before then we looked at the property.

Q. Well, now, then would this refresh your memory——

The Court: Just a minute. You say you put up your earnest money?

A. Yes.

The Court: How much did you put up?

A. $200.

Q. But then how much money did you bring with you to the closing of the deal?

A. Well, I brought 400 and some odd cents.

Q. And a little over; so altogether in cash you put up altogether $600. Well, you had put up for recording your deed.

A. Yes; the whole thing $610.39. Besides what I borrowed.

Q. That's the total amount of cash?

A. Yes.

Q. That you and your husband actually put into the property?

A. Sure.

Mr. Vaughn: Is there anything else your Honor wants to know?

Questions by the Court:

A. Yes, sir; You say you went to Mr. Bishop some time in July, and he showed you some properties?

A. Yes; we looked at some houses.

Q. And you didn't like them?

A. No.

Q. And then he showed you this property on Labadie avenue?

A. Says, has he?

Q. I say, afterwards he showed you this property on Labadie avenue?

A. Yes.

Q. Did he tell you who owned the property on Labadie avenue?

[fol. 121] A. Well, he told me a widow lady owned it.

Q. A widow lady owned it?

A. Yes.
Q. And did he tell you that he owned it?
A. No.
Q. Personally?
A. No.
Q. Did he tell you he had bought it for $4650?
A. No.
Q. You paid altogether in deeds of trust and everything, amounts to $5700, don't they? 32, and 17, and 2,—they amount to, let's see——

Mr. Vaughn: That amounts to $5760.
The Court: $5700.

A. Yes.
Q. Well, did you know that Mr. Bishop on the 4th of August had bought that property himself for $4650, and that he then turned around and sold it to you for $5700, and made a thousand dollar profit, nearly?

Mr. Vaughn: Now, if the Court please, I object to that because the figures don't show any such profit as that.
The Court: What do they show?
Mr. Vaughn: A great deal less than that.
The Court: Well, what do they show?
Mr. Vaughn: Well, they show $200 of money, of the $800 necessary to make the 5700.
The Court: Well, he got credit for that he put up out of the 4650.
The Court: Then he only paid 4450 after that.
Mr. Vaughn: They only put up 600, your Honor.
The Court: Yes, but they signed notes for it; they are liable.
Mr. Vaughn: That's right, but here are the commissions for the 2nd and 3rd deeds of trust.
The Court: Yes; but the commissions wouldn't have to be paid if he hadn't resold it to them for nearly a thousand dollars profit.
Mr. Vaughn: Well, it's proportionate, certainly.
Q. Did you know he bought this property himself and then turned around and sold it to you at a profit to himself?
A. No. I understood he was a real estate man, a real estate business.
[fol. 122] Q. Did he tell you that he bought it, that he was selling it to you at a profit of what I think was a thou-

sand and which Judge Vaughn thinks was less than a thousand dollars?

A. Well, I didn't know.

Q. You didn't know that?

A. No.

Q. Did he tell you anything about restrictions being on the property against colored people?

A. No; I didn't know nothing about restrictions.

Q. Well, did he tell you anything one way or the other about it?

A. No; we just saw some colored children out there, and he said "Let us try," there wasn't no restrictions on there because there were other colored people there.

Q. Mr. Bishop told you that?

A. That's what he said.

Q. And Mr. Bishop told you, because he saw these colored children he was sure there were no restrictions?

A. That he didn't think there was any restrictions.

Q. He didn't say he was sure?

A. Yes. Well, he didn't think there was.

Q. Have you any children of your own?

A. Yes.

Q. How many, please?

A. 5.

Q. Small?

A. Well, my baby is 5 years old, the rest on up. My baby is 10 years old, but I have an adopted baby 5.

Q. Then you have 6 altogether?

A. Yes; 6 altogether.

Q. Well, that's very nice. How large an apartment is 4600 Labadie; you just moved in the lower floor, didn't you, or upper floor, which is it?

A. I live in the lower floor.

Q. How large is your apartment or flat?

A. What I live in?

Q. Yes.

A. It's 4 rooms. Of course it ain't enough for my family, but that's why I was trying to get large room.

Q. How do you heat it?

A. The furnace in the basement.

Q. Is there one furnace for both the upstairs and downstairs?

A. Yes.

[fol. 123] Q. And each party takes care of their own furnace, of course.

A. Yes.

Q. You don't take care of the furnace for the upstairs people?

A. No.

Q. Do you know the lady that lives upstairs?

A. Well, I got acquainted with them, but I really don't know her name.

Q. Has she any children?

A. No, she don't have any children.

Q. Does she and her husband live there?

A. Yes; she has a son.

Q. How old is he?

A. I don't know. If there's any children I don't know, but I seen her and her husband and one son.

Mr. Vaughn: Is he grown up?

A. Yes, a big boy; young man.

Q. You say you have met the lady lives upstairs?

A. Yes.

Q. Have you had any conversations with her?

A. Yes; we have conversations.

Q. Well, were you friendly?

A. Sure we was friendly.

Q. Friendly.

A. Someone called on my 'phone Saturday and I went and told her, and she went and spoke to them.

Q. She did what?

A. She come to my room and she spoke to someone on my 'phone.

Q. I see. Is that the only time you have met her?

A. Yes, and no; I met her twice, met her twice. Seems like I—twice I have met her.

Q. And to whom do you pay these notes?

A. To Vaughn Real Estate.

Q. Who?

A. Vaughn, Bawn, to Bawn, Bowers.

Q. You pay all these notes on the 2nd deed of trust to Bowers?

A. Yes.

Q. Do they fall due monthly?

A. Well, I just pay $48.50.

Q. $48.50 a month?

A. A month.

Q. To Bowers Real Estate Company?

Mr. Vaughn: That is, you pay that in that office.

A. Yes; I pay that at that office.

Mr. Vaughn: That's where the notes are made payable, [fol. 124] aren't they?

A. Yes. The $48.

Q. Did you ask Mr. Bishop anything about restrictions?

A. No. The man brought me the letter after I moved in the house.

Q. No; I mean before that, after you bought the property from him.

A. No, I didn't ask him, because after he saw the children he didn't think there was any restriction. I thought when they place a restriction, wouldn't be no colored in the block at all.

Q. Did you or your husband, either one, ever see the certificate of title on the property?

A. No.

Q. Never did; you just took Mr. Bishop's word for it that the title was good?

A. Yes, sir.

Q. Did he tell you the title was good?

A. Yes; as far as his understanding it was good,

Q. Did he tell you he had a certificate of title from the title company?

A. He say he had the titles.

Q. The title?

A. Yes; he had read the title.

Q. And did he tell you it was owned by some widow lady?

A. Yes, sir. It was owned by some widow lady.

Q. You say what?

A. I say it was, he said it was owned by some widow lady.

Q. And this was in early August, you think, when you first looked at this property?

A. Looked like to me it was, seemed like to me it was in the last of July.

Q. Last of July.

A. But it was in August when I—I don't know exactly, somewhere along there.

The Court: I see. You may continue.

Mr. Vaughn Resumes Direct examination.

Q. When did you go to him first to ask about the property?

A. Well, I had already looked at some property on Madison by another agent, and I didn't know much about property, and I spoke to him about it.

[fol. 125] Q. Well, when was that? That's what I am trying to get at.

A. That was on—I don't know exactly.

Q. Was that in July or August?

A. In July somewhere.

Q. Was it the first part of July, or last part?

A. It was along about the first part when I was looking at it.

Q. When you looked at the Madison avenue property?

A. Yes, if I am not mistaken; I am not sure when I looked at it, but it was sometime before I spoke to him.

The Court: Well, she can't place it before or after the first of August, can she?

A. No, it was before I made a payment on this property.

The Court: Yes, we understand that.

Q. Now, when you went over on Coleman street and—those other streets, was that in August, in the month of August?

A. I think so, if I am not mistaken.

Mr. Seegers: If the Court please, I know he has a right to examine her, but the lady has testified two or three times.

The Court: Well, she is just guessing at it.

A. Because I don't exactly know.

Mr. Seegers: Any attempt to put this date after August 7th shouldn't be permitted.

Mr. Vaughn: We are trying to find out, your Honor.

The Court: She doesn't know, though.

Mr. Vaughn: It could have been, though. The first contract was made August 4th.

The Court: Between Fitzgerald and Paulos.

Mr. Seegers: No; that's August the 7th.

Mr. Vaughn: Here it is, right down here. It's approved on the 4th.

Mr. Seegers: That's the receipt for the earnest money, and the contract is dated the 7th.

Questions by the Court:

Q. When you first went to Mr. Bishop what did you say to him?

[fol. 126] A. I just told him, you know, I was thinking about trying to buy me a home so I would have a place for my children, and I was tired of moving around.

Q. What else did you say about what he was to do? What did you say with reference to employing him as your agent to get property for you?

A. You know, I was just telling him the place, and my husband wanted a place out; he, you know, he didn't want to buy it down, he wanted one kind of out; so I was just telling him that.

Q. Did you pay Mr. Bishop any commission for his services in any way?

A. No, sir.

Q. You did not?

A. No, sir.

The Court: All right. That's all I have to ask.

Cross-examination By Mr. Seegers.

Q. I would like to bring out one or two more facts. Mrs. Shelley, do you know there's a first deed of trust on that place for $3250.

A. Yes.

Q. How much do you have to pay on that?

The Court: I guess the $48, does that include everything or do you have to pay more than that?

A. I have to pay $48 every two months, and every three months I pay, $126 in all, $80 something; I just can't remember that. In all, I have to pay every 3 months $126 and some cents. And it's straight $48. But now the month, I pay $126; that's included with the $48.

The Court: That is, for 2 months you pay $48 a month, and then the third month you pay $126?

A. Yes.

The Court: That's the way it is. All right.

Q. Now, have you been told by anybody that that covers all 3 of those deeds of trust, Mrs. Shelley?

A. Says what?

Q. Do you know that there is a $3250 deed of trust on the place, a first deed of trust?

A. Yes; I know, well, I have my deed of trust for $3250, if I am not mistaken, and then have $1700.

[fol. 127] Q. And then there's another one for $200; did you know that?

A. Let me see.

Q. Well, do you have the papers with you, ma'am? Refer to them.

A. (Examining papers:) I don't know, but I know it's $3200 and $1700.

Q. Did you know you signed another deed of trust and notes for 200 more than that?

A. 200 more——

Q. For money——

A. Oh, sure, for what I borrowed.

Q. You borrowed a total then of 1700 and 200, which was 1900? Did they tell you how much you were borrowing?

A. Well, she explained to me when I closed the deal, you know, about the second deed and trust and about the $200 I borrowed; yes, I know that.

Q. What was that 200 you borrowed?

A. Well, to make my 800; I just had 600.

Q. Oh, to make a total of 800 you were going to pay out?

A. Yes.

Q. Now, when you made these payments you testified to, has anybody told you those are the payments on the $3200, the $1700 and the $200, they are all in together?

A. The lady I paid it to.

Q. What kind of work does your husband do, Mrs. Shelley?

A. A laborer.

Q. For who?

A. Well, he works at the Small Arms.

Q. Has he lost his job out there since it closed down?

A. No, he hasn't lost it yet.

Q. Does he anticipate it happening; does he think it will happen?

Mr. Vaughn: If the Court please, I don't think that's proper.

Mr. Seegers: It's just as material as any of the information we have gone into. I am trying to find out whether or not these people anticipate making these payments, that's apparently one thing, on the salaries; and something else beneath it.

The Court: Well, I think that's true, but I don't think they have anything to do with it.

[fol. 128] Mr. Vaughn: I object to it, your Honor; it's wholly immaterial.

The Court: If she doesn't want to answer it she needn't. Do you wish to answer that question, whether your husband expects to lose his job out there at the Small Arms?

A. Well, he know he ain't going to be at the Small Arms; he might work out there this month, but he has other jobs.

The Court: He has other jobs?

A. They want him at other places; so he hasn't decided which one he will take.

Q. With all those children I don't suppose you can go out to work?

A. I do work.

The Court: You do? You have your hands full, though.

Q. Who takes care of the children, Mrs. Shelley, when you go to work?

A. Well, my children go to school.

Q. They all go to school?

A. Yes; I got the baby in the kindergarten.

Q. The basement of this house, you and Mrs. Edelen, the lady upstairs, do you both do your laundry in the basement there together?

A. Yes, sir.

Q. Now, you mentioned a little while ago that after you were served with the papers in this suit that you asked Mr. Bishop about the restrictions. What did he say about that?

A. I didn't understand you.

Q. You mean you didn't understand it?

A. No, I just didn't understand it and wanted to know about it, what they mean.

Q. Did you ask him about it?

A. Yes.

Q. What did he say?

Mr. Vaughn: I object to that, your Honor, this conversation after the papers were served; I think it's gone far enough.

A. I didn't know what it was; I just wanted to know whether the property was our property or what it was; I just wanted him to explain to me what it was.

[fol. 129] Q. What did he tell you?

Mr. Vaughn: Renew my objection.

The Court: Overruled.

Q. What did he say?

A. Well, he said he would read them and see.

Q. What did he tell you?

A. Well, he, if—he told me he would see. And I would have to come down later.

Q. He said you would have to——

A. Yes.

Q. Did he tell you why you had been sued, Mrs. Shelley?

A. Seems like he told me, from the way the papers read, that the place was restricted; something like that, I don't know definite how he explained it. But he told me he let me know when I have to come down.

Q. Do you understand anything about this lawsuit now, why you have been sued and why you are here?

Mr. Vaughn: I object to it.

A. I didn't see——

The Court: There's no harm in it; overruled.

A. Well, I understand the white people didn't want me back.

The Court: You understood what?

A. I just understand the white people don't want me back.

The Court: Don't want you back?

A. That's what I understand. And I don't know why; I see other colored people on the street, that's why I bought it. If I hadn't a-seen them I never would.

The Court: You have the sympathy of the Court; I will tell you that.

Q. Mrs. Shelley, one more question and I will be through. When did you first give the $200 earnest money to Mr. Bishop?

A. In August.
Q. In August?
A. And closed the deal in September.

[fol. 130] Questions by the Court:

Q. Did you get a receipt for that money? Did you get a receipt for that $200?
A. Yes.

The Court: Did you get a receipt for that?

A. Sure did.
Q. Have you that?
A. Let me see. (examining papers) I have receipts here. The $48 down payment, let me see. $446.17; that's what I have receipt for.

Mr. Seegers: You don't have a receipt for the $200. May we see that, please?

Q. Do you have a receipt for the first 200, Mrs. Shelley?
A. I have this.

Mr. Seegers: No, that's a receipt for $100.

Q. That's a later receipt. What's the date of the $400?
A. $446.17.

Mr. Seegers: $446.17 receipt is dated September 5th, and the receipt for $48.50 is dated October 8, and shows on its face "note on second deed of trust". That's exactly what I am trying to bring out; I am sure this lady doesn't know there's a $3250 deed of trust on the place.
A. Yes, I know.
Mr. Vaughn: Your Honor, she has the closing sheet there in her pocketbook; here it is, look at it.

Q. Are you sure you haven't a receipt for that $200?
A. That's what I have the receipt for (indicating the paper referred to by Mr. Vaughn.)
Q. That's the closing statement. That $200 you paid first, Mrs. Shelley, are you sure you haven't a receipt for that? That first $200.

Mr. Seegers: Your Honor, I would like for you to see this (the "closing sheet".)
The Court: Yes. Let me see it; I will form my own conclusions about it. (Examining it) According to this, there

is a $3210 first deed on which she pays $40 quarterly; that's $10 a month.

Mr. Seegers: That's just on the principal, isn't it, your Honor?

[fol. 131] The Court: It doesn't say. It just says $40 quarterly.

Mr. Seegers: Well, it couldn't be the interest.

The Court: It may be both, you know. The 2nd deed of trust, she pays $40 monthly; $1700.

Mr. Seegers: On the second?

The Court: Yes.

Mr. Seegers: What does it show for the third, if your Honor please?

The Court: The third, 6 months, $50, $200; now that doesn't say monthly. $50 monthly. Then earnest money, $200. According to that, in addition to the $200—third deed of trust, she paid $200 earnest money.

Mr. Vaughn: If your Honor please, the only thing is she borrowed the $200, they put it up as earnest money.

The Court: They have got two $200 items. The earnest money is separate from that. Earnest money is $200, separate from the third deed of trust.

Mr. Vaughn: That's what she said she made it for, was the $200 she borrowed.

The Court: There are two items of $200 each here; and accrued interest on first deed, of course that's not it. Let's see. On the first deed of trust, this says 3210. What per cent, is that?

Mr. Seegers: That's 6%, your Honor; that amounts to $189 a year, or $15.75 a month. I beg your pardon; on 3210——

The Court: $92.60; is that right?

Mr. Seegers: Yes, and that will run at about $16 a month. $16.05 a month. That's interest on the first.

The Court: Now, on the second deed of trust it says $40 monthly; and on the third deed of trust, $50.

Mr. Vaughn: After 6 months.

The Court: No, it doesn't say after 6 months. Let me figure it out. How much does that receipt call for?

Mr. Seegers: $48.50.

The Court: $48.50. Now she says she pays that.

Mr. Seegers: And it shows on the second deed of trust——

The Court: Never mind, now.

Mr. Vaughn: That would be the net, plus the interest.

The Court: That's $48.50, is it?

[fol. 132] Mr. Seegers: That's $48.50.

The Court: All right. Now that's—and in the third month she says she pays 126. That only figures up to $223 in three months.

Mr. Seegers: May I say this, your Honor: that according to——

The Court: Take off that $50 it wouldn't be enough.

Mr. Seegers: No. According to that statement, $10 a month would be paid principal on the first, 40 on the second including interest, and principal $50 a month on the third. $16.05 accruing on the first all the time, for a total of $116.05 a month.

The Court: This tells you how it is paid; a great deal more than the lady understands is paid. That's all.

James T. Bush, sworn, Examined by Both Counsel, his testimony for the purposes of this record on appeal is agreed to have been as follows:

That he is a real estate dealer with an experience in St. Louis in that business of 25 or more years, and during all that time to his knowledge Negroes lived in some of the properties on Labadie avenue in the block in question in this suit; that he was the agent who sold the Robert P. Woods Labadie avenue property mentioned herein; that he ordinarily receives 15 to 20 calls per day from Negroes for rental property and is able to place about 5 of such calls in one month; and that the only way he could get a house for a Negro in St. Louis at this time would be if someone should die, leave the City or be evicted.

The Last Named Witness Was the Final Witness Heard on the Motion to Show Cause

And on November 1, 1945, it is ordered by the Court, by oral stipulation of the parties and by consent of the parties that the testimony and all exceptions thereto on the hearing on the order to show cause may be considered as part of the record on the hearing of this cause on the merits.

And on said November 1, 1945, this cause coming on for hearing, come the parties hereto, by their respective at-

torneys; thereupon the hearing of this cause progressed before the Court upon the pleadings, evidence and proof adduced on testimony this day offered and the testimony and all exceptions thereto on the hearing of the order to show cause; thereupon said hearing being terminated, said [fol. 133] *cause on its merits is submitted* to the Court, and the Court not now being sufficiently advised of and concerning the premises, takes time to consider thereof.

Thereupon, it is ordered by the Court that the restraining order heretofore made an issued herein remain in full force and effect in the meantime.

Plaintiffs' request for findings of fact and conclusions of law filed.

Hearing On the Merits

On November 1st, 1945, the parties appearing by the same counsel before the Honorable Wm. K. Koerner, Judge aforesaid, in said Division 3 of the Circuit Court of the City of St. Louis, the following proceedings were had On The Merits in said cause.

Plaintiffs Evidence

To support the issues on their part, plaintiffs offered and introduced the following evidence (certain witnesses omitted pursuant to stipulation hereinbefore set forth).

Joseph Lo Chiona, sworn, on Direct Examination by Mr. Seegers in Behalf of Plaintiffs, testifies.

Q. Will you state your name, please, sir?
A. Joe LoChinoa.
Q. And where do you live, sir?
A. 4517 Labadie avenue.
Q. Do you own that property?
A. My wife.
Q. Your wife owns it?
A. Yes.
Q. How long has she owned it?
A. It will be since 1929.
Q. '29?

A. 1930.

Q. 1930?

A. Yes.

Q. Do you know what lot you own? Well, I will withdraw those questions. Mr. LoChiona, do you intend to sell your property or rent it to Negroes?

A. No, sir.

[fol. 134] Mr. Vaughn: Just a minute.

A. No, sir.

Mr. Vaughn: Just a minute, now; strike that out.

The Court: Objection sustained.

Mr. Vaughn: Won't you wait 'til I make my objection? That calls for the intention of this man; not proper.

The Court: Sustained.

Mr. Seegers: I will make an offer of proof, that this witness would testify, if permitted to testify, that he doesn't intend ever to sell his property or rent it to Negroes.

A. Right.

The Court: Objection sustained.

Mr. Vaughn: Move to strike out his answer.

The Court: The answer is stricken out and the objection is sustained. You can't tell who his grantee would sell it to, you know; he might sell it to someone else.

[fol. 135] Frances Gumming, Sworn, On Direct examination by Mr. Seegers in Behalf of Plaintiffs, testifies.

Q. Will you state your name, please?

A. Well, I am his daughter; I am living at that same home; my name is Frances Gumming.

Q. What address is that?

A. 4533 Labadie.

Q. I wish to ask you if you know, would your father sell that property or rent it to Negroes?

Mr. Vaughn: I object to that, your Honor.

The Court: Sustained.

Mr. Seegers: I wish to make an offer of proof. This witness would testify, if permitted to testify, that her father owns the property at 4533 Labadie avenue, and that he

doesn't intend and never shall sell or rent his property to Negroes.

The Court: Objection sustained. No use to put on any more evidence like that. You can make your offer of proof of the same number of witnesses.

Mr. Seegers: All right. I wish to make an offer of proof that Mr. V. Lange would testify he owned 4545 Labadie avenue covered by the restriction; that he would not and does not intend to sell or rent his property to Negroes.

Mr. Vaughn: Same objection.

The Court: Sustained.

Mr. Seegers: That Huldah Murray owns the property at 4546 Labadie; that it is covered by the restriction; that she does not intend nor desire nor will she ever rent or sell the property to Negroes.

Mr. Vaughn: Same objection.

The Court: Sustained.

Mr. Seegers: That Emmeline Stricker would testify she owned the property at 5700 Labadie covered by the restriction; that she would not—does not intend nor ever shall [fol. 136] sell her property or rent it to Negroes.

Mr. Vaughn: Same objection.

The Court: Objection sustained. Can't you make an offer of proof by so many property owners?

Mr. Seegers: Well, we will get down to the same thing the Court brought up once before.

I would say the same testimony would be given by Mrs. George Hutti, who owns the property at 4520 Labadie avenue.

Mr. Vaughn: Same objection.

The Court: Objection sustained.

Mr. Seegers: That Mrs. Edelen would testify that she is the tenant upstairs at 4600 Labadie; that she has no objections to paying her rent to Negroes but that she will not continue to live in the same house with Negroes, and that if Negroes remain in the house she will move out.

Mr. Vaughn: I object to that.

The Court: Sustained. How long has this lady lived in the house?

Mr. Seegers: I think she testified 6 years.

Mrs. Edelen: 6½ years.

The Court: Let the record so show, if there is no objection.

Mr. Vaughn: No objection, your Honor, how long she has lived there.

Mr. Seegers: That William Winckoski would testify he owns the property at 4603 covered by the restriction; that he doesn't intend ever to sell or rent his property to Negroes.

Mr. Vaughn: Same objection.

The Court: Sustained.

Mr. Seegers: That Marie Battisti, whose husband Antonio Battisti, the signer of this covenant, represents, [fol. 137] owns the property 4604 Labadie, and that she doesn't intend ever to sell or rent that property to Negroes.

Mr. Vaughn: Same objection.

The Court: Objection sustained. You could have gotten the same sort of testimony from Mrs. Sohlmann that you offer from these other people.

Mr. Seegers: The reason I do this, your Honor, is because some cases go off on this sort of thing.

That Alice Barr would testify she lives in and owns the property at 4606 Labadie; that the property is not restricted; that she bought it from white people in October, 1945, and that even though it isn't restricted she doesn't ever intend nor will she ever sell it or rent it to Negroes.

Mr. Vaughn: Same objection.

The Court: Sustained.

Mr. Seegers: That Mr. Piekarski would testify he owns 4619 Labadie; that he bought it in April, 1945; that he doesn't intend nor shall he ever sell it or rent it to Negroes.

Mr. Vaughn: Same objection.

The Court: Same ruling as to all these objections.

Mr. Seegers: I understand that. That Herman Walcewski would testify he owns the property at 4617 Labadie; that it is covered by the restriction; that he bought it in 1926, and doesn't intend, never shall sell it or rent it to Negroes. That E. Fleming would testify he owns 4631 Labadie and doesn't intend and never shall lease it, sell it or rent it to Negroes. That Mr. Bishop would testify he owns the property at 4560 Labadie avenue, and that he doesn't intend and never shall sell it, lease it or rent it to Negroes. That Jennie Zinser would testify that she owns the property at 4622 Labadie avenue; that she doesn't intend and never shall sell it, lease it or rent it to Negroes.

[fol. 138] The Court: Same ruling.

Mr. Seegers: If the Court please, that's the plaintiffs' case. The plaintiffs will rest with the statement to the Court that the plaintiff does intend, before closing the case, to present a request for findings of fact and declarations of law in the case. The statute provides that must be done before the close of the case.

Plaintiffs rest.

Plaintiffs Rest in Chief on the Merits

Motion to Dismiss and Denial Thereof

Mr. Vaughn: If the Court please, I desire to ask the Court to dismiss the plaintiffs' petition upon the specific reason or ground that the restrictive covenant or agreement which is in evidence shows on its face that it doesn't contain sufficient description of the property sought to be restricted therein to enable this defendant, or any other stranger to the agreement, to know, or understand, or to find from looking at any document referred to therein which is lawfully on record in the City of St. Louis, what property is meant to be covered.

The Court: If you describe an abstract showing the chain of title it will show this restriction, I believe.

Mr. Seegers: Do I understand this is an oral motion to dismiss in the nature of a demurrer?

Mr. Vaughn: Yes.

Mr. Seegers: I object to it, for the reason there is no such thing.

The Court: Well, I will hear it.

Mr. Vaughn: If the Court please, in the case of——

The Court: Judge, I wouldn't want to decide that question now. That question is still in the case. If you are right, it will be in the case even though you put on your testimony. Make your motion now to save your point, and I will overrule it.

[fol. 139] Mr. Vaughn: My motion is that no lot number is mentioned in the restrictive agreement; that not even the addresses of the persons who signed the restrictive agreement are contained therein; and that beside the names of them occurs no lot number or indication of the property they own, that it has simply said the property fronting on Labadie avenue and running back to the alley between Cora avenue and Taylor avenue, without any differentiation of

who owns which, and no one not a party to that agreement is able to tell what is a part of that property.

The Court: Motion to dismiss will be overruled.

Defendants' Evidence

(Excluding the witness Frank Weathers, whose testimony is omitted pursuant to stipulation at pp. —— hereof, the parties plaintiffs and defendants stipulate and agree that the testimony of the witnesses for defendants shall be presented to the appellate court in the form of statements, as follows.)

Fannie Cook

That she was a member of the Racial Relations Committee appointed by the mayor of the City of St. Louis;

That she had been active in organization and social work among Negroes in St. Louis;

That Negroes in some parts of St. Louis lived in crowded, congested conditions contributing to crime, juvenile delinquency and disease among them;

That she had made a book review of Gunnar Myrdol's work titled AN AMERICAN DILEMMA, for the St. Louis Public Library;

That she read from magazines, periodicals and, particularly, Gunnar Myrdol's book aforesaid portions of said book, referring to the crowded and congested living condi- [fol. 140] tions of Negroes in the United States, over the objection of plaintiff's counsel as to reading from Myrdol's book; that she agreed with the statements in his book, as well as similar statements in the periodicals and magazines read, referring to the crowded and congested living conditions of Negroes in the United States resulting in crime, juvenile delinquency and disease.

That upon cross examination she testified white people in St. Louis and elsewhere also lived in crowded and congested conditions, and from those conditions arose crime, juvenile delinquency and disease.

John T. Clarke

That John T. Clarke was executive secretary of the St. Louis Urban League;

That there are areas in St. Louis restricted against occupancy or sale by or to Negroes;

That great congestion brought about crime, juvenile delinquency and disease among Negroes in St. Louis;

That the Urban League had a shed on the back of the lot on which its building was erected that was hardly fit for beasts to live in, and in which Negroes were living because they could not find places elsewhere;

That upon cross examination he testified large areas in St. Louis were populated by whites who lived in crowded, congested and unsanitary conditions, and such whites also suffered a high rate of juvenile delinquency, crime and disease;

And that great areas, particularly in south St. Louis and St. Louis county, were not restricted.

[fol. 141] LILLIAN MOSEE

That Lilliam Mosee was a social worker in St. Louis and for the past 27 years a case worker for the Provident Association of St. Louis, and her work carried her into the homes of poor people of the Negro race in St. Louis;

That it was almost impossible to find places for Negroes in St. Louis to live in, due to the influx of transient and migratory workers;

That the Carr Square Village, a St. Louis municipal housing project, was in her district, and that all the 629 units in it were occupied, and 7,000 applicants were on the waiting list;

That in the neighborhood of the Carr Square project it was usual to find 5 or 6 Negro families living in one house; that in many instances if there were 8 or 9 rooms in a house there would be 8 or 9 families in the house living one family to a room, and many of them had children.

Defendants rest.

Both sides rest.

The Court: Judge Vaughn, you may submit a request for finding of facts; Mr. Seegers has requested his findings. The Court may give or refuse all findings, and make some of his own.

And said findings of fact and declarations of law requested by plaintiffs and filed with the Court on said November 1, 1945, were in the following words and figures (omitting caption and signatures).

Plaintiffs' Request for Findings of Fact and Declarations of Law

Plaintiffs respectfully request of the Court that it find the following facts:

(1) That on February 17, 1911, there was recorded in [fol. 142] recorder of deeds' office for the City of St. Louis, in book 2400, page 488, a contract or agreement actually signed by the parties whose names appear thereon, which agreement was duly acknowledged and was to the effect that the signers intended to restrict the use of the property by such signers then owned and located on the north and south sides of Labadie avenue between Cora avenue on the west and Taylor avenue on the east, being city blocks 3710b and 3711b; that said restriction agreement was intended by the signers to prohibit for a period of 50 years the use or occupancy, or both, to the end that no parcel of property then and there owned by the signers should, for a period of 50 years, be used or occupied by a person or persons of the Negro or Mongolian races; that said agreement expressly stated the intention of the signers that the agreement itself was to run with and attach to the various parcels of land owned by the signers in the city blocks mentioned, and that the agreement of the signers was to be binding upon the signers themselves, their assigns, legal representatives, and successors in title, unless removed by the consent of all of the property owners by an instrument or deed made and executed and put of record.

(2) That at the time of the filing of this suit said restriction agreement was in full force and effect and had not been removed by the signers or their successors in title.

(3) That on September 11, 1945, the defendants J. D. Shelley and Ethel Lee Shelley, his wife, purchased property known as 4600 Labadie avenue; that said parcel known as 4600 Labadie avenue was on February 16, 1911, owned by Samuel Werner; that Samuel Werner signed the restriction agreement aforementioned; that defendants J. D. Shelley and Ethel Lee Shelley were the ultimate grantees or suc- [fol. 143] cessors in title of the said Samuel Werner.

(4) That the defendants J. D. Shelley and Ethel Lee Shelley took title to the property known and numbered as 4600 Labadie avenue with constructive knowledge of the

restriction agreement of record; that their agents E. M. Bowers and/or Robert E. Bishop had actual knowledge of the restriction agreement of record; that the defendants J. D. Shelley and Ethel Lee Shelley took the property with constructive and actual knowledge, (the latter imputed to them by virtue of the knowledge of their agents aforesaid) of the restriction agreement of record.

(5) That the plaintiffs Louis W. Kraemer and Fern E. Kraemer are the ultimate grantees and successors in title to Emma G. Thomson and William I. Thomson; that Emma G. Thomson and William I. Thomson signed the restriction agreement aforesaid; that on February 16, 1911, the title to the property known and numbered as 4532 Labadie avenue was well vested in William I. Thomson and/or Emma G. Thomson, his wife; that said property was willed by Emma G. Thomson to William I. Thomson; that William I. Thomson died intestate in 1925; that Fern E. Kraemer (nee Thomson) plaintiff herein, was the only heir of William I. Thomson and acquired the property by descent; that Fern Thomson conveyed the property to a straw party who conveyed back to Louis W. Kraemer and Fern E. Kraemer, plaintiffs herein.

(6) That defendants J. D. Shelley and Ethel Lee Shelley entered into, occupied and began to live in the property known and numbered as 4600 Labadie on October 9, 1945; that at the time of the trial and during the period of the trial they continued to live in and occupy the said premises.

(7) That the restriction agreement aforementioned involved and affected 57 parcels of real estate; that the signers of the restriction agreement owned at the date of the signing of the instrument 47 of those parcels; that the [fol. 144] percentage or proportion of property signed up and affected by the restriction agreement was 82.5; that the total frontage on both sides of Labadie avenue between Cora avenue and Taylor avenue is 1569 feet, 8 inches; that the total frontage affected by the restriction agreement is 1245 feet, 4¾ inches; that the front footage not affected by such agreement was 324 feet, 3¼ inches.

(8) That the property known and numbered as 4562 Labadie avenue was not affected by the restriction agreement aforesaid, and has been continuously and steadily occupied by Negroes from an indeterminate date prior to

1923; that 4560 Labadie avenue, the property immediately east of 4562 Labadie, is at the time of the trial and has ever been within the memory of the witnesses, occupied by white persons and has never been occupied by Negroes; that 4556 Labadie avenue, being the next house immediately east, is at the time of the trial occupied by white persons and has never been, in the memory of the witnesses, occupied by Negroes; that 4600 Labadie avenue, the property in suit, was affected by the restriction agreement and has never been, up to the time the defendants Shelley moved into it on October 9, 1945, owned or occupied by Negroes; that 4604 Labadie avenue, the next house immediately west of the house in suit, is at the time of the trial and for an indeterminate period of time has been owned and occupied by white persons and has never in the memory of the witnesses been occupied by Negroes; that 4606 Labadie avenue, two houses immediately removed westwardly from the house in suit, is at the time of the trial, and has been for an undetermined period, owned and occupied by white persons; that except for a short and undetermined period in the rather distant past, 4600 Labadie avenue was never occupied by Negroes; that 4609 Labadie avenue is at the time of the trial and for at least 34 years prior thereto has been owned and occupied by Negroes; that 4610 Labadie avenue is at the time of the trial and has been for a period [fol. 145] of at least 34 years, owned and occupied by Negroes; that 4614 Labadie avenue is at the time of the trial and has been since 1892 owned and occupied by Negroes.

(9) That with the exception of the temporary but undetermined period during which 4606 Labadie avenue was occupied by Negroes, there has been no parcel of property on either side of Labadie avenue between Cora avenue and Taylor avenue that has become owned or occupied by Negroes since 1923; that there are at the time of the trial, by excluding the defendants Shelley residing at 4600 Labadie avenue, 4 Negro families residing on the south side of Labadie avenue in houses numbered 4562, 4608, 4610 and 4612; that 4562 Labadie avenue has been owned and occupied by Negroes since 1923 or prior thereto; that 4608, 4610 and 4614 have been owned and occupied by Negroes for a period from 1911 back to 1892; that no other property on the block is at the time of the trial owned or occupied by

Negroes; that there was no evidence that any other property on either side of the street between the points mentioned will be or is intended to be sold to Negroes or permitted to be occupied by Negroes.

(10) That there is no neighborhood, community or area predominantly populated by Negroes within 2½ to 3 blocks of the property affected by the restriction agreement as aforesaid.

(11) That the character of the neighborhood (that is the two city blocks covered by the restriction agreement in evidence as well as the surrounding area for a radius of 3 blocks) has not changed within the memory of the witnesses from at least 1923.

In addition to the above findings of fact, plaintiffs respectfully request that the Court file with its decree a memorandum containing declarations of law upon which the Court bases its opinion and decree.

[fol. 146] ORDER DISMISSING PETITION—November 1, 1945

This cause having heretofore on the 1st day of November, 1945, come on for hearing on the merits and the parties hereto having appeared by their respective attorneys, and said cause having been submitted to the Court upon the pleadings, the evidence that day adduced and adduced at the hearing on the exceptions to the order to show cause, and the Court on said last mentioned date having taken the same under advisement, now at this November 19, 1945, the Court being sufficiently advised of and concerning the premises, doth find that the plaintiffs are not entitled to a temporary injunction or to the relief prayed for in their petition.

Wherefore it is ordered, adjudged and decreed by the Court that the restraining order heretofore issued herein be dissolved, that plaintiffs' petition be and the same is hereby dismissed, and that the defendants be discharged and go hence without day as to said petition, and that the costs of this proceeding be paid by the plaintiffs, for which let execution issue.

Court's findings of fact and conclusions of law filed.

Court's memorandum filed.

Findings of Fact and Conclusions of Law

Findings of Fact

1. The restriction agreement upon which this suit is based is as recorded in the recorder of deeds' office of the City of St. Louis in book 2400 at page 488.

2. When this agreement was signed there were 39 owners of land in the district, owning 57 parcels of land comprising in the aggregate 61 lots. 30 land owners, owning 47 parcels of land comprising 48 lots and having a total frontage on Labadie avenue of 1245 feet 4¾ inches, signed the agreement; 9, owning 10 parcels comprising 13 lots and [fol. 147] having a total frontage of 324 feet 3¼ inches, did not sign.

3. In 1907 the property known as 4600 Labadie was conveyed to Samuel Werner; on February 16, 1911, Samuel Werner signed this agreement as "S. Werner"; on September 11, 1945, defendants purchased this property through a chain of warranty deeds from Samuel Werner and his intermediate grantees, none of which deeds mentioned this restriction. Defendants are Negroes, and, since October 9, 1945, have occupied these premises as their home.

4. When they purchased this property defendants had no actual knowledge of this transaction. They bought the property from Robert E. Bishop, who was also defendants' agent in connection with the purchase. Bishop held title in the name of Josephine Fitzgerald and concealed from defendants his ownership of the property, and defendants had no knowledge of such ownership. Bishop had actual knowledge of this restriction, but in connection with this sale his interest was antagonistic to the interest of defendants.

5. Plaintiffs own a parcel of land in the district, being successor in title to Emma and William I. Thomson who owned the property on February 16, 1911, and signed the agreement.

6. On the south side of Labadie avenue, in the immediate vicinity of 4600 Labadie, the houses, numbered from east to west, the race and length of tenancy of their respective

occupants, and whether or not the owners in 1911 signed the restriction, are shown by the following table.

[fol. 148]

House Number	Signed Restriction	Occupancy
4556	No	White, within memory of witnesses
4560	No	White, within memory of witnesses
4562	No	Negro for 23 years
4600	Yes; "S. Werner"	White to October 9, 1945
4604	Yes	White within memory of witnesses
4606	No	Negro to 1944, then white
4608	No	Negro since 1882
4610	No	Negro 30 years or more
4614	No	Negro at least 23 years

Those numbers that have been occupied by Negroes have been occupied by successive owners and tenants, some moving out and others moving in. No property in the district, other than as shown in the foregoing table, is now occupied by Negroes or ever has been, so far as the evidence shows.

7. The Negro population has greatly increased in recent years, and now numbers in excess of 100,000. Some parts of the area in which they live are overcrowded, which is detrimental to their moral and physical well being.

8. The agreement is not signed by a sufficient number of landowners to accomplish its purpose.

Conclusions of Law

1. The result sought to be accomplished by the restriction agreement was, as stated therein, that "no part of said property or any portion thereof shall be . . . occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property . . . against the occupancy . . . of any portion of said property . . . by people of the Negro or Mongolian race."

2. It was contemplated and intended by the signers of said agreement that it would be signed by all of the land-

[fol. 149] owners within the district, or, if not by all, at least by a sufficient number to accomplish the desired result.

3. For want of finality and completeness of assent the restriction agreement did not impose a restriction upon defendants' property.

Wm. K. Koerner, Judge.

MEMO—OPINION—November 19, 1945

The Court does not feel justified in finding that the signers of the agreement intended to burden their property with this restriction even though about 20% of the frontage within the district was not so burdened. The recitals and provisions of the agreement indicate a contrary intention. The agreement begins with the recital that it is made by "the owners of the *property* fronting on Labadie avenue between Cora avenue on the west and Taylor avenue on the east." The natural inference is that the instrument was to be signed by the owners of *all* the property fronting on Labadie between Cora and Taylor. The agreement then provides that the signers "do place and make upon *the real estate* fronting on Labadie avenue and running back to the alley" . . . "a restriction", etc. The natural inference is that the restriction is to be placed upon *all* of the real estate within the designated district. Other provisions of the agreement are

1. That the restriction shall not be renewed except by the consent of "*all* of the property owners".

2. That "the said property is hereby restricted" . . . so that "*no part of said property or any portion thereof* shall be" . . . "occupied by any person not of the Caucasian race";

3. "it being intended hereby to restrict the use of *said* [fol. 150] *property*" . . . "against the occupancy" . . . "*of any portion of said property*" . . . "by people of the Negro or Mongolian race". . . .

4. That a suit may be brought to forfeit the title to any lot used in violation of the restriction for the benefit of each and every person that may become the owner "*of any property on said street*".

(All underscoring in the above quotations is the Court's.)

Provision of an instrument creating a servitude should be strictly construed and all doubts resolved in favor of the free use of the land; and it is the opinion of the Court that the above recitals and provisions indicate that the parties intended the agreement should be signed by all of the landowners within the district.

. . . . . .

Consideration should also be given to the purpose of the agreement. The signers certainly did not intend to be bound unless that purpose was accomplished. If the agreement had been signed by only 25% of the landowners it would clearly have been ineffective and not binding. As stated above, the wording of the agreement indicates that it was contemplated all of the landowners should sign; but if this is not so it was intended that at least enough should sign to make the restriction effective. In the Court's opinion that requirement has not been met.

The legal principles announced in Thornhill *v.* Herdt, 130 S. W. (2d) 175, are applicable and controlling here; and, upon the authority of that case and for the reasons above given, the Court holds that for want of completeness of assent this agreement did not impose a restriction upon defendants' property.

The case of Porter *v.* Prior, 164 S. W. (2d) 353, cited by plaintiffs' counsel, is not in point because in that case the [fol. 151] agreement was signed by all of the landowners within the restricted area.

. . . . . .

There is no evidence that defendants had actual notice of this agreement. Their agent Bishop probably knew of it, but since his own evidence showed that his interest was adverse to that of defendant the law does not impart his knowledge to them. Whether or not defendants had constructive notice depends upon whether this agreement is in defendants' chain of title. Their title is derived through a chain of warranty deeds from "Samuel Werner" and his intermediate grantees; none of them mention this restriction. This agreement is signed "S. Werner", and contains no description of the property except that it fronts on Labadie avenue between Cora and Taylor. Identity of

name carries with it a presumption of identity of person; but everyone is presumed to have a full first name, and there is no presumption that "S. Werner" is "Samuel Werner". In the absence of such presumption it is doubtful whether this instrument, executed by "S. Werner" and containing a description applicable to any one of 57 parcels of land, is in a chain of title to a specific parcel of land derived by warranty deeds from "Samuel Werner" and intermediate grantees.

. . . . . .

The contention that the restriction violates the constitutions of Missouri and of the United States and the federal civil rights statutes, and is against public policy, are ruled against defendants on the authority of Thornhill *v.* Herdt and Porter *v.* Prior, supra, and the numerous authorities cited in the note to 14 ALR, pp. 1237 et seq. The contention that the agreement violates the rule against perpetuities is also overruled.

The defense of laches and change of conditions in the [fol. 152] neighborhood are overruled upon the authority of Thornhill *vs.* Herdt, supra, in which case upon a very similar state of facts the Court of Appeals held against those defenses.

In accordance with the above views, the restraining order heretofore issued (but never in force) will be dissolved, the temporary injunction will be denied and plaintiffs' bill will be dismissed.

PLAINTIFFS' MOTION FOR NEW TRIAL—Filed Nov. 26, 1945

Comes now the plaintiffs in the above entitled cause and move the Court to grant them a new trial in the above cause and set aside the decree and judgment therein for the following reasons:

(1) Because the Court erred in the admission of incompetent, irrelevant and immaterial testimony offered by the defendants and admitted by the Court over the objection of the plaintiffs.

(2) Because the Court erred in the exclusion of competent, material and relevant evidence offered by the plaintiffs

and excluded by the Court over the objection of the plaintiffs.

(3) Because upon the face of the pleadings neither of the defendants nor either of them were entitled to the judgment.

(4) Because the Court erred in entering judgment against the plaintiffs and in favor of the defendants.

(5) Because the Court erred in assessing the costs against the plaintiffs.

(6) Because the Court erred in refusing the restraining order sought by the plaintiffs.

[fol. 153] (7) Because the Court erred in refusing to rule on the temporary injunction as sought by plaintiffs.

(8) Because the Court erred in refusing the permanent injunction sought by the plaintiffs.

(9) Because the Court erred in refusing to find each and every one of the facts numbered 1 to 11 inclusive requested by plaintiffs.

(10) Because the decree and judgment of the Court is against the law.

(11) Because the decree and judgment of the Court is against the evidence and the greater weight of the credible evidence in the case.

(12) Because the decree and judgment of the Court is against the law and the evidence.

(13) That the Court, during the hearing on the temporary injunction and also during the trial upon the merits of the cause, was antagonistic and hostile to each and every witness tendered on behalf of the plaintiffs.

(14) That the Court, during the hearing on the temporary injunction and during the trial upon the merits of the cause, was overly kindly, courteous and condescending to defendants' witnesses.

(15) That the Court, during the hearing on the order to show cause and for the temporary injunction, and also upon the trial on the merits of the cause, was openly antag-

onistic and hostile to plaintiffs' counsel, continuously argued with plaintiffs' counsel and openly criticized and rebuked plaintiffs' counsel, all without cause or reason.

(16) That during the hearing upon the order to show cause and for the temporary injunction and also during the trial on the merits, the Court was kindly, courteous and condescending to defendants' counsel.

[fol. 154] (17) That during the trial of said cause on the merits and while the cause was progressing, and while a witness was on the stand, and during the examination and cross-examination of said witness, the Court did openly acknowledge by a waving gesture the presence of some male person, the identity of whom was then and is now unknown to plaintiffs, that said male person was seated in the spectator section of the court room and was at the time of such acknowledgment engaged in conversation with one or more of defendants' witnesses; that coincident with such acknowledgment by the Court, the Court did beckon such male person up to the bench and did seat said male person at Court's left hand while the Court was on the bench and while the trial was progressing and a witness was being examined and cross-examined, and that thereupon the Court and said male person did engage in mutual conversation during which the Court did display to said male person the copy of the restriction covenant in issue in the case, and by the Court's gestures and manner did indicate to counsel and to the spectators in the Court room that the Court was engaged in a discussion of the case with said person; that said male person remained at the Court's left hand for a period of some considerable time; that the Court's finding that the Negro population in St. Louis had increased to over 100,000 at the present time was based in part upon the testimony of the witness who was then being cross-examined; that the Court's finding that some Negroes in St. Louis live in congested and crowded areas, and that such congestion and over-crowding is detrimental to their moral and physical well-being was based upon the testimony of said witness and that the Court did not hear the cross-examination of said witness during which cross-examination these two matters which the Court found as facts were being discussed catechetically [fol. 155] with the witness.

(18) That the Court's findings of fact and particularly that finding numbered 3 is contradictory to the second paragraph on page 3 of the Court's memorandum supporting the decree and judgment; that the Court's finding of fact numbered 3 is contrary to the evidence in that the deeds comprising the chain of title from Samuel Werner did mention the restriction.

(19) That the Court's finding of fact numbered 4 is a conclusion of law rather than a finding of fact, in that the Court finds as a matter of fact that Bishop's interest in the sale of the property involved was antagonistic to the interest of the defendants; that even if such is fact rather than law, it is unsupported by the evidence in that both Bishop and the defendants testified that their interests were the same, namely, the acquisition by defendants of the property.

(20) That the Court's finding of fact numbered 6 with respect to 4606 Labadie is contrary to the evidence and is based upon no evidence at all to the effect that said property was occupied by Negroes to 1944, the evidence being that the property has been occupied by whites for a considerable number of years.

(21) That the Court's conclusions of law are contrary to reason, in that the Court's conclusion that the covenant is unenforceable because not signed by all of the owners of all of the property in the restricted area is incompatible with the Court's finding that some of the property was at the time of the signing of the restriction owned and occupied by Negroes, and it is inconsistent and against reason to hold that an agreement to restrict occupancy against Negroes must be signed by Negroes to be effective or enforceable by the white persons who signed it.

(22) That the Court's decree and judgment is based upon the conclusion that the restriction agreement on its [fol. 156] face shows that it was intended to be signed by all of the owners of all of the property in the district, and ignores the wording of the agreement which limits the contractual relations "the undersigned owners of property fronting on . . ."; that the premises upon which the Court bases its conclusion being false, the conclusion is false: that the conclusion does not logically follow the pre- -3.

Wherefore, the premises considered, plaintiffs pray the Court to set aside its judgment and decree herein and to grant to plaintiffs a new trial.

ORDER OVERRULING MOTION FOR NEW TRIAL—DECEMBER 17, 1945

And on December 17, 1945, the Court having seen and examined and duly considered the plaintiffs' motion for a new trial, heretofore filed and submitted herein, and being sufficiently advised of and concerning the premises, doth order that plaintiffs' motion for a new trial be and the same is hereby overruled.

NOTICE OF APPEAL—Filed December 26, 1945

Notice is hereby given that Fern E. Kraemer and Louis W. Kraemer, plaintiffs above named, hereby appeal to the St. Louis Court of Appeals from the judgment entered in this action on the 19th day of November, 1945.

G. L. Seegers, Attorney for plffs.

Dated December 26, 1945.

[fol. 157] MEMORANDUM OF THE CLERK

I have this day mailed by registered mail a copy of the within notice of appeal to each of the following persons at the address stated:

George L. Vaughn, 2316a Market St., St. Louis, Mo. Attorney for Defendant J. D. Shelley, Ethel Lee Shelley & Josephine Fitzgerald.

I have also mailed a copy of the notice of appeal to the clerk of the St. Louis Court of Appeals together with the docket fee deposited by appellant.

Walter H. Toberman, Circuit Clerk, by James T. McConnell, Deputy Clerk.

Dated December 28th, 1945.

STIPULATION APPROVING TRANSCRIPT OF RECORD

Pursuant to Section 135, General Code for Civil Procedure, Laws of Missouri 1943 (Session Acts), and Rules of the Supreme Court of Missouri, 1.04, paragraph (c), the attorneys for plaintiffs and defendants agree that the

foregoing transcript shall constitute the transcript on appeal, and hereby approve it as correct on this 23 day of March, 1946.

G. L. Seegers, Attorney for Plaintiffs, George L. Vaughn, Attorney for Defendants.

[fol. 158] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 159] IN SUPREME COURT OF MISSOURI

EXTRACTS FROM RESPONDENT'S BRIEF—Filed October 3, 1946

POINT III

Recording Defective Instrument Imparts No Notice

The recording of an instrument affecting real property wherein the lots or parcels of land are not described by giving the lot numbers, or by location, monuments, courses and distance, so as to enable strangers to the instrument to tell what property is intended to be restricted and who is the record owner thereof, and which does not refer to any other recorded document where such information may be obtained by the reading of such other instrument, is not sufficient to impart notice either of the existence of such an instrument or of what it contains to a subsequent purchaser. Such an instrument is void for lack of a proper description of the property sought to be restricted thereby.

Ozark Etc. Co. v. Frank, 156 Mo. 673, 57 S. W. 540;
Gatewood v. House, 65 Mo. 663.

POINT VIII

Restriction Is Contrary to Federal Law

(a) The restrictive agreement pleaded by appellants as the basis of their right to injunctive relief is forbidden by and contrary to the provisions of Section 42 of Title 8 of the United States Code, in that said restriction attempts to deny to citizens of the United States, who are citizens and residents of the State of Missouri, but not white, the same right as white citizens of Missouri enjoy to inherit,

purchase, lease, sell, hold, use, and convey real property for resident purposes, and is therefore void.

Section 42 of Title 8, United States Code; 17 C. J. S. 191, P. 545;
Id. Sec. 201, p. 555 et seq;
Hagerty et al. v. St. Louis, Mfg. and Storage Co., 142 Mo. 238, 44 S. W. 1114;
[fol. 160] Spragus v. Rooney, 104 Mo. loc. cit. 358, 16 S. W. 505, 508;
Lehigh Valley R. Co. v. United Lead Co., 133 A. 290, 102 N. J. Law, 545, (and cases cited on invalidity of contracts violative of valid laws of United States)

(b) The restrictions against Negroes contained in the agreement relied upon by appellants as the basis of their right to maintain this action is forbidden by, and is contrary to, the provisions of Section 41 of Title 8 of the United States Code, in that said restriction attempts to deny to respondents and other persons who are subject to the jurisdiction of the United States, and residing in the State of Missouri and are citizens thereof, but who are not white, the same right to make and enforce contracts and to enjoy the full and equal benefit of all laws and proceedings for the protection of their property as is enjoyed by white citizens of this state; and because it attempts to subject respondents to other and different exactions than those imposed on white citizens of Missouri, solely because of the difference of their race and color from that of such white citizens.

Section 41, Title 8, U. S. C.;
Lehigh Valley R. Co. v. United Lead Co., supra.

(c) Because said agreement is the result of a conspiracy on the part of appellants, their cosigners and their privies and assigns, and members of the Real Estate Exchange of the City of St. Louis to accomplish a result by the contract of individual citizens which the Constitution of the United States inhibits, towit, the denial of property and contractual rights of citizens of the United States, and to persons subject to its jurisdiction, residing in the State of Missouri, which are guaranteed to them by valid federal laws; and to avoid and circumvent the rulings in reference to said rights which were upheld and declared in Buchanan v. Warley,

245 U. S. 60, against residential segregation based solely on race and color.

Civil Rights Cases, 109 U. S. 3;
Buchanan v. Warley, supra, and cases there cited construing sections 41 and 42 of Title 8 of U. S. Code (1917);
Harmon v. Tyler, 272 U. S. 668 (1927);
Gandolfo v. Hurtman, 49 F. 181;
In re: Missouri Pacific R. Co., 7 of F. Suppl. 1.

[fol. 161] Point IX

State Action Invoked

Appellants, by means of the action in which this appeal has been taken, seek to have the State of Missouri, acting through the judicial branch of its government, enforce an agreement which abridges the privileges and immunities of citizens of the United States and attempts to deny to respondents the equal protection of the laws, contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Sec. 1, 14th Amend. Const. of U. S.;
Twining v. New Jersey, 211 U. S. 78;
Home Tel. and Tel. Co. v. Los Angeles, 277 U. S. 278; (and cases cited)
Civil Rights Cases, supra.

Point X

Missouri Cases Upholding Validity of Restrictions Against Negroes Should Be Overruled

The cases, decided by the Supreme and Appellate Courts, sustaining the validity of restrictions against colored people based solely on race and color should be overruled, for the following reasons:

(a) Agreements and covenants containing such restrictions are contrary to and forbidden by sections 41 and 42 of Title 8 of the United States Code, both of which sections apply to individuals.

State ex rel. v. Dawes, 285 S. W. 479, 482;
Lehigh Valley v. United Lead Co., supra;

Clyatt v. United States, 197 U. S. 207, 217 et seq.;
United States v. Morris, D. C. Ark., 125 Fed. 322 (1903);
Civil Rights Cases, Supra, loc. cit. 22.

(b) The two federal statutes in question have never been pleaded, made an issue, or been considered by the Supreme or Appellate courts of Missouri when passing on the validity of such agreements or covenants in connection with the right to own or occupy property as places of residence based solely on race and color.

Koehler v. Rowland, supra;
Porter v. Johnson, supra;
Thornhill v. Herdt, supra;
Porter v. Prior, supra.

[fol. 162] (c) Such agreements and covenants are wholly without force or power until the state, through its judicial branch, gives them life and vitality by enforcement, contrary to equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

(d) The State of Missouri has modified and liberalized its public policy in the according of citizenship rights to colored people by provisions in the New State Constitution, which was adopted since the cases, supra, were decided.

Sec. 2 of Art. I (Bill of Rights) Mo. Const. 1945;

(e) Since the aforesaid cases were decided, the United States has broadened and liberalized its public policy, and more specifically defined the same as regards treatment of persons on account of race, color and religion.

(f) The case of Koehler v. Rowland, supra, which was decided within a few months after the decision of the Supreme Court of the United States in Buchanan v. Warley, supra, and upon which all the other rulings by the appellate courts of Missouri upholding the validity of restrictive agreements and covenants against Negroes are based, should be no longer followed, for the reason that the ruling in Cowell v. Colorado Springs, 100 U. S. 55, which it cites and applies, dealt with an entirely different class of facts than those considered in Koehler v. Rowland, and was therefore no

authority for the Supreme Court of Missouri to follow on the facts and issues before it.

Questions Not Raised in Missouri Court Heretofore Set Later.

[fol. 163] In Supreme Court of Missouri

[Title omitted]

Argument and Submission—October 3, 1946

Come now the parties, by their respective attorneys, and after arguments herein submit this cause to the Court.

In the Supreme Court of Missouri en Banc, September 1946 Session

No. 39997

Louis Kraemer *and* Fern E. Kraemer, his wife, Appellants;

vs.

J. D. Shelley and Ethel Lee Shelley, his wife, and Josephine Fitzgerald, Respondents.

Appeal from the Circuit Court of the City of St. Louis

Opinion—December 9, 1946

This is a suit to enforce restrictions against the occupancy of property by negroes. From a judgment holding the restrictions invalid, plaintiffs appeal.

In 1911 some of the owners of the property fronting on both sides of Labadie Avenue in the double blocks between Taylor Avenue on the east and Cora Avenue on the west in the City of St. Louis signed the restrictive agreement set out below. Thirty out of a total of thirty-nine owners signed the agreement. Of the nine owners who did not sign, [fol. 164] five were negroes. Negroes had occupied one parcel since 1882. The entire district comprised fifty-seven parcels divided into sixty-one lots. The thirty parties who signed the agreement owned forty-seven parcels or

forty-eight lots having a total frontage of 1245 feet. The nine owners who failed to sign, including the five negroes, own ten parcels or thirteen lots having a total frontage of 324 feet. The parcels owned by the negroes bore house numbers 4562, 4604, 4608, 4610 and 4614. The parcel involved in this case, which is covered by the agreement, is number 4600. It was purchased from white owners through a real estate firm, placed in the name of a white person who was a straw party, defendant Fitzgerald, and transferred to defendants Shelley and his wife, negroes, who are occupying the premises. Plaintiff- are the owners of a parcel in the district covered by the agreement. They seek an injunction against defendants Shelleys' occupancy and ask that title be divested out of them.

The agreement which was duly recorded in the office of the Recorder of Deeds is as follows: "This contract of restrictions made and entered into by the undersigned, the owners of the property fronting on Labadie Avenue in Blocks 3710-B and 3711-B between Cora Avenue on the West and Taylor Avenue on the East, Witnesseth: That for and in consideration of one dollar and other valuable considerations paid by the undersigned, one to the other, the receipt of which is hereby acknowledged, each and every one of the undersigned persons hereby contract and agree with the other and for the benefit of all to place, and do place and make upon the Real Estate fronting on Labadie Avenue and running back to the alley on the North and South sides of Labadie Avenue between Taylor Avenue and Cora Avenue, a restriction, which is to run with the title of said property in favor of each and every one of the undersigned parties, and their assigns and legal representatives and successors as the owners of this property, which shall not be removed except by the consent of all of the [fol. 165] property owners by some instrument or Deed, made and Executed and put of record, the said property is hereby restricted to the use and occupancy for the term of Fifty (50) years from this date, so that it shall be a condition at the time and whether recited and referred to or not in subsequent conveyances and shall attach to the land as a condition precedent to the sale of the same, that hereafter no part of said property or any portion thereof shall be, for said term of Fifty-years, occupied by any person not of the Caucasian race, it being intended to restrict the use of said property for said period of time against the

occupancy as owners or tenants of any portion of said property for resident or other purpose by people of the Negro or Mongolian Race. It is further contracted and agreed that upon a violation of this restriction either one or all of the parties to this agreement shall be permitted and authorized to bring suit or suits at law or in equity to enforce this restriction as to the use and occupancy of said property in any Court or Courts and to forfeit the title to any lot or portion of lot that may be used in violation of this Restriction for the benefit of each and every person that may now or hereafter, after the recording of this restriction, become the owner of any property on said street. To have and to hold each to the other their said property, subject, however, always and under all conditions to the terms of this restriction, each warranting to the other the compliance in every respect of the above restrictions. In Testimony whereof, the parties hereto have signed their names and seal this the 16th day of February, 1911."

The chancellor ruled it was the intention of the parties to the restrictive agreement, as shown by the terms of the agreement, that *all* the property within the district was to be covered by the restrictions. Therefore, since the owners of some of the parcels did not sign the agreement leaving some of the property not covered, the chancellor concluded he was bound by the ruling in Thornhill v. [fol. 166] Herdt (Mo. App.) 130 S. W. (2d) 175, and held the agreement never became final and complete and was of no force.

The restrictive agreement in Thornhill v. Herdt designated as parties all of the owners of property within the proposed district, and the court there found it was essential to the intent of the agreement that all the property should be covered. That decision is applicable here only if we find that the agreement in this case shows the same intent to bind all or none.

"The primary consideration in the construction of a restrictive agreement—just as in the case of the construction of any other character of instrument—is to ascertain and give effect to the true intention of the contracting parties as the same may be gathered from the terms of the agreement itself when considered in the light of all facts and circumstances attending its execution." Thornhill v. Herdt, supra.

Keeping this rule in mind we find it was not the intention of the parties that the agreement in this case should become effective only if every owner in the district would join as a party to it, so that the chancellor's conclusion to the contrary is erroneous. The agreement by its terms intended to cover only the property of those owners who signed it. Nowhere does the agreement designate all the owners as parties. It is limited to "the undersigned," who are then described as "the owners of the property frontinf on Labadie Avenue." The expressed consideration passed between "the undersigned, one to the other." It was "each and every one of the undersigned persons" who subjected their parcels to the restriction. The restriction runs in favor of "the undersigned parties." Only "parties to this agreement" are authorized to bring suit to enforce the restriction. It would seem to us by the repeated use of the term "undersigned" and the reference to the "parties" to this agreement that the agreement was [fol. 167] intended to cover only the parcels owned by those who became parties to it and to be effective as to them whether all signed or not. There is no mention in the agreement that its validity is conditioned on the joining of all or any particular number of the owners.

When we look to the surrounding circumstances our view of the intent of the agreement finds even stronger support. At the time the agreement was executed negroes owned five parcels in the district. Could they be expected to join in an agreement which would make their occupancy of their own property a ground for forfeiting their title? We say emphatically not. Although these five parcels were occupied by negroes when the agreement was made the district was then some distance from predominately negro sections. Obviously it could not have been the intention of the parties to prevent any negro occupancy at all because that already existed. It must have been their intention to prevent greatly increased occupancy by negroes. And their plan has succeeded. One of the five parcels then owned by negroes has passed into white hands. The remaining parcels, including the four which were occupied by white people who did not join the agreement, are still of white occupancy. The transfer of the parcel involved here to negroes seems to be the first attempt to violate the restriction.

The absence of nine parcels from the coverage of the agreement does not affect the agreement's — since it was not the intention that every parcel should be covered before the agreement would become effective. Any number of owners, however small, may make a restrictive agreement which would be technically valid. The practical result of the failure of some of the owners in a district to join such an agreement does not necessarily affect the agreement's validity but affects its enforcement. If the purpose of a plan under which some property is restricted fails because other property in the district has not been likewise restricted, then equity will not enforce the agree-[fol. 168] ment. The general purpose of a restrictive agreement must be achieved in order to justify its burden. Where the enforcement would impose a hardship and bring no benefit then the consequences of such enforcement would be inequitable and relief will be denied. The latter situation prevailed in Pickel v. McCawley, 329 Mo. 166, 44 S. W. (2d) 857 and the court refused to enforce the agreement.

In this case, as we have pointed out, the purpose of the plan is being accomplished. Also, the chancellor has found there is no change in the conditions in the district which would warrant withholding equitable relief, and that the parties are not guilty of laches. There has been no waiver or abandonment. Accordingly, there is no reason why the enforcement of the restriction would be inequitable. The agreement is valid and the restriction should be enforced. Plaintiffs are entitled to the equitable relief they are seeking.

In a recent case we considered the same question in connection with the rule announced by Thornhill v. Herdt, supra, and held the restrictive agreement was enforceable even though the restriction did not cover all of the parcels in the district because of the failure of some of the owners to sign the agreement. Swain v. Maxwell, — Mo. —, 196 S. W. (2d) 780. Our views here are the same as in the case and confirm its rulings.

Agreements restricting property from being transferred to or occupied by negroes have been consistently upheld by the courts of this state as one which the parties have the right to make and which is not contrary to public policy. Swain v. Maxwell, supra; Porter v. Pryor (Mo.) 164

S. W. (2d) 353; Koehler v. Rowland, 275 Mo. 573, 205 S. W. 217, 9 ALR 107; Thornhill v. Herdt, supra; Porter v. Johnson, 232 Mo. App. 1150, 115 S. W. (2d) 529. The new provision in the Bill of Rights in the Constitution of 1945, Art. I, Sec. 2, "that all persons are created equal and are entitled to equal rights and opportunities under the [fol. 169] Law" not only sustains these decisions but even strengthens them. Other jurisdictions also uphold such agreements. See 14 Am. Jur. Covenants etc., Sec. 208, and Anno. 162 ALR 180 and prior annotations.

The restriction does not contravene the guaranties of civil rights of the Constitution of the United States. Corrigan v. Buckley, 271 U. S. 323, 46 S. Ct. 521, 70 L. Ed. 969. A recent case reviewing the *the* Corrigan case and again upholding such an agreement is Mays v. Burgess, 147 F. (2d) 869, 172 ALR 168, decided by the United States Court of Appeals for the District of Columbia. That case considered the question whether a restrictive agreement violated the Fifth and Fourteenth Amendments and Section 1 of the Thirteenth Amendment of the Constitution of the United States and the statutes enacted thereunder, particularly 8 U. S. C. A., Sections 41, 2, and held it did not. That case followed the ruling in Corrigan v. Buckley that neither the Thirteenth nor Fourteenth Amendments prohibited private individuals from entering into contracts respecting the control and disposition of their property. While Gandolfo v. Hartman (1892) 49 F. 181 takes a contrary view, we find it has been criticized and not followed, and so far as it relates to the question here has been overruled in effect by Corrigan v. Buckley. Nor can it be claimed that the enforcement of such a restriction by court process amounts to action by the state itself in violation of the Fourteenth Amendment, which relates to a state action exclusively. To sustain such a claim would be to deny the parties to such an agreement one of the fundamental privileges of citizenship, access to the courts. This would violate both the State and Federal Constitutions. Art. I, Sec. 14 Constitution 1945, Art. IV, Sec. 2, Constitution United States.

The filing of the agreement for record with the recorder of deeds gave the defendants at least constructive notice of the restriction which is sufficient. Under Section 3426 and 3427 R. S. 1939 Mo. RSA every instrument in writing [fol. 170] which affects real estate imparts notice by being

recorded. The sufficiency of notice of restrictions was considered in King v. St. Louis Union Trust Co., 226 Mo. 351. "An instrument containing a restrictive agreement entitled to record and which is recorded is notice, although it does not contain a conveyance of reality." 18 Am. Jur. Covenants, etc. Sec. 331. Defendants are in no position to claim lack of notice.

The question whether such an agreement violates the rule against perpetuities was decided in the negative in Koehler v. Rowland, 275 Mo. 573, 205 S. W. 217.

The chancellor found the negro population in St. Louis has greatly increased in recent years, and now numbers in excess of 100,000; and that some of the sections in which negroes live are overcrowded, which is detrimental to their moral and physical well being.

Such living conditions bring deep concern to everyone, and present a grave and acute problem to the entire community. Their correction should strikingly challenge both governmental and private leadership. It is tragic that such conditions seem to have worsened although much has been written and said on the subject from coast to coast. See Mays v. Burgess, supra, and Fairchild v. Raines, 24 Cal. (2d) 818, 151 Pac. (2d) 260. But their correction is beyond the authority of the courts generally, and in particular in a case involving the determination of contractual rights between parties to a law suit. If their correction is sought in the field of government, the appeal must be addressed to its branches other than the judicial.

The judgment dismissing the petition should be reversed and the cause remanded with directions to the chancellor to enter a decree upholding the restrictions and granting plaintiffs the relief prayed for, and such other relief as the court may deem just and proper. Furthermore, the chancellor may retain jurisdiction of the case for the settlement of any claims between the defendants and others over the [fols. 171:172] purchase of the property which may arise because of the enforcement of the restriction.

Such is our order.

James M. Douglas, Judge.

All concur, except Gantt, J. not sitting.

IN SUPREME COURT OF MISSOURI

39997

LOUIS KRAEMER and FERN KRAEMER, His Wife, Appellants,

vs.

J. D. SHELLEY and ETHEL LEE SHELLEY, His Wife and JOSEPHINE FITZGERALD, Respondents

Appeal from the Circuit Court of the City of St. Louis

JUDGMENT—December 9, 1946

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of the City of St. Louis rendered, be reversed, annulled and for naught held and esteemed, and that the said appellants be restored to all things which they have lost by reason of said judgment. It is further considered and adjudged by the Court that the said cause be remanded to the said Circuit Court of the City of St. Louis for further proceedings to be had therein, in conformity with the opinion of this Court herein delivered; and that the said appellants recover against the said respondents their costs and charges herein expended and have execution therefor. (Opinion filed)

[fol. 173] IN THE SUPREME COURT OF MISSOURI EN BANC, SEPTEMBER 1946 SESSION

[Title omitted]

[File endorsement omitted]

RESPONDENTS' MOTION FOR REHEARING—Filed December 24, 1946

Come now respondents and respectfully move the Court to set aside its decision and opinion herein and grant a rehearing of this cause on the following grounds:

1. Because the court in holding that "The filing of the agreement for record with the recorder of deeds gave the

defendants at least constructive notice and that was sufficient," has overlooked the stipulation numbered 3 on page 4 of the Transcript of the Record, which reads as follows:

> "(3) It is further stipulated and agreed that said restriction agreement does not contain the lot number of any parcel or lot of ground mentioned therein, nor does it contain any reference to any other recorded document wherein such information may be found."

and has failed to apply thereto and follow and its decision and opinion are in conflict with the following controlling decisions, which were duly submitted to the Court at the hearing by counsel for the respondents at pages 7, 15, and 16 of respondents' brief, and in the oral argument, wherein the Supreme Court of Missouri, in Ozark Land & Lumber Co. v. Franks, 156 Mo. 673, 57 S. W. 540, 19c. cit. 543, quoted the following with approval from Gatewood v. House, 65 Mo. 663:

> "To constitute the record of a deed notice to subsequent purchasers, the description contained in the deed should be such as would enable such purchasers to identify the land by name, location, monuments, courses, and distances, or numbers, or the deed should refer to some other instrument lawfully of record which does contain such means of identification."

And this ruling has been consistently adhered to by the appellate courts of Missouri since that decision.

[fol. 174] 2. Because in holding that "The agreement is valid and the restriction should be enforced," the court has failed to follow and its opinion and decision are in conflict with the following controlling statutes and decisions:

(a) Section 42 of Title 8 of the United States Code, which deals with the property rights of citizens.

(b) Section 41 of Title 8 of the United States Code, which for contractual rights and equal protection under the laws.

(c) The ruling and decision in Buchanan v. Warley, 245 U. S. 60, at page —, construing the aforesaid sections of the United States Code in reference to the property rights

and the right to equality and protection under the laws of colored citizens, where it is held:

> "Colored persons are citizens of the United States and have the right to purchase property and enjoy and use the same without laws discriminating against them solely on account of color. These enactments did not deal with the social rights of men, but with those fundamental rights in property which it was intended to secure upon the same terms to citizens of every race and color. The Fourteenth Amendment and those statu-es enacted in furtherance of its purpose operate to qualify and entitle a colored man to acquire property without state legislation discriminating against him solely because of color."

All of the above—both of said statutes and the ruling in Buchanan v. Warley—were called to the attention of this court and duly submitted by counsel for the respondents at pages 9, 10, 17, and 18 of respondents' brief and in oral argument.

(d) Sprague v. Rooney, 104 360, 16 S. W. loc. cit. 508, where the following ruling was made:

> "If there be one principle of the law well settled, it is this: That a contract, express or implied, based on an illegal consideration, whether that consideration appear on the face of the contract or be proved *aliunde*, cannot be enforced either at law or in equity; that the moment the illegality of the contract is disclosed the gates of legal and equitable relief and remedy are at once shut against the party who seeks to enforce such a contract. Nor is it necessary that the courts should refuse to enforce it. When relief based upon it is asked at their hands. These positions are sustained, perhaps, by as *as* great an array of authorities as is to be found on any other one topic of law."

Which ruling was duly submitted to the court in respondents' brief at page 9 and in oral argument.

(e) Hagerty et al. v. St. Louis Mfg. & Storage Co., 44 S. W. 1114, loc. cit. 1116, where it is held:

> [fol. 175] "The law will not stultify itself by promoting on the one hand what is prohibited on the other, and

will for that reason leave the parties to this suit where it finds them, unsanctioned by its favor, and unaided by its process."

3. Because in holding: "The restriction does not contravene the guaranties of civil rights of the Constitution of the United States," the court has failed to follow and its opinion and decision are in conflict with the following decisions of the federal Supreme Court, which are binding and controlling decisions on the Supreme Court of Missouri:

(a) Civil Rights Cases, 109 U. S. 3, loc. cit. 22, where it is held that sections 41 and 42 of Title 8 of the United States Code dealt with fundamental rights of citizens and not with their social rights, which said decision was duly submitted to the court in respondents' brief at p. 11 and 17, and in oral argument.

(b) Buchanan v. Warley, supra, where it is ruled:

> "These enactments (sections 41 and 42 of Title 8 of the U. S. Code) did not deal with the social rights of men, but with those fundamental rights in property which it was intended to secure upon the same terms to citizens of every race and color,"

and which was duly submitted to the court in respondents' brief at pages 10 and 18, and in the oral argument, and

(c) in which said case, at page 75, the Supreme Court answered the following question in the negative, towit:

> "The concrete question here is: May the occupancy, and necessarily the purchase and sale of property of which occupancy is an incident, be inhibited by the States, or by one of its municipalities, solely because of the color of the proposed occupant of the premises? (p. 75)

Which said ruling was duly submitted to the court in respondents' brief at page 18 and in oral argument.

4. Because in holding: "Nor can it be claimed that the enforcement of such a restriction by court process amount to action by the state itself in violation of the Fourteenth Amendment, which relates to a state action exclusively,"

the court has failed to follow and its opinion and decision are in conflict with the following decisions of the federal Supreme Court which are binding upon it; but which, through inadvertence of counsel for the respondents, were not called to the attention of the court;

[fol. 176] (a) Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673, wherein a decision of the Missouri Supreme Court was recorded, it is held:

> "If the result above stated were attained by an exercise of the state's legislative power, the transgression of the due process clause of the 14th amendment would be obvious * * * The federal guarantee of due process extends through the judicial as well as through the legislative, executive or administrative branch of the government."

(b) Raymond v. Chicago Traction Co., 207 U. S. 20, 36, where the Supreme Court of the United States:

> "The provisions of the 14th Amendment are not confined to the action of the state through its legislature, or through the executive or judicial authority. Those privisions relate to and cover all the instrumentalities by which the state acts."

In dealing with substantive rights, the Supreme Court of the United States, in:

(c) Ex Parte Virginia, 100 U. S. 339 (cited by nearly every term of the Court as the basic case on state action by courts), at page 347, said:

> "Whoever by virtue of public position under a state government deprives another of property, life or liberty, without due process of law, or denies or takes away the equal protection of the law violates the constitutional inhibition; and as he acts in the name and for the state is clothed with the state's power, his act is that of the state. This must be so, or, as we have often said, the constitutional prohibition has no meaning, and the state has clothed one of its agents with power to annul or evade it."

(d) Twining v. New Jersey, 211 U. S. 78, (Showing there is no differentiation between the Equal Protection Clause

and the Due Process Clause in determining what is state action), where the Court said:

> "The judicial act of the highest court of the state in authoritiatively construing and enforcing its laws is the act of the state."

(é) In Cantwell v. Connecticut, 310 U. S. 296, the Supreme Court of the United States reversed a conviction on the ground that the common law of Connecticut, as interpreted and applied by the courts, was a denial of due process by state action contrary to the Fourteenth Amendment.

The decision and opinion of the court set out 4, supra, fails to follow and is in conflict with the ruling in State v. Miksick, 225 Mo. 561, 125 S. 507, which through inadver- [fol. 177] tence of counsel for the respondents' was not submitted to the court, wherein the court said at page 510 of the Southwestern:

> "The case at bar falls clearly within the rules of *the rules of* the Lochman Case, and this case being one, in the form presented to this court, of which the United States would have jurisdiction, the principles announced by the Supreme Court of the United States furnish a rule to govern as well as to guide."

5. Because in following and applying the rulings in Corrigan v. Buckley, 271 U. S. 323, 46 S. Ct. 521, 70 L. Ed. 969, and Mays v. Burgess, 147 F. 92d 869, 172 ALR 168, the court has erroneously followed and applied the rulings in two cases which arose in the courts of the District of Columbia, which is neither a state nor a territory, and to which neither the Fourteenth Amendment nor sections 41 of Title 8 of the United States Code apply. The Fourteenth Amendment inhibition reads:

"No state shall make or enforce", etc.; and each of said sections of the code uses the term, "in every state and territory"; and the court's reliance on the above cited cases as precedents, or as binding authority for upholding the validity of the restrictive agreement under consideration by it fails to follow and apply the rulings and decisions, and in conflict with the same, in the following Missouri Supreme Court decisions, which through inadvertence of counsel

were not submitted to the court on the hearing of this case, towit:

Bender v. Weber et. ux., 157 S. W. 570, loc. cit. 572, par. 3, wherein it is said:

> "In the next place, a good rule, of everyday service, is that judgments of appellate courts on one state of facts may not be applied automatically to another state of facts, but, contra, the general language in decisions must be read in the dry light of the very case held in judgment, and not otherwise, State ex rel. v. St. Louis, 241 Mo. loc. cit. 238 et seq., 145 S. W. 801."

6. Because the holding of the court that "That agreements restricting property from transferred to or occupied by Negroes * * * not contrary to public policy", is in conflict with, contrary to, and forbidden by Clause two of Article VI of the Constitution of the United States, as the same applies to Articles 55 and 56 of the United Nations Charter, to which treaty the United States is a signatory, said treaty being referred to and submitted to the court in respondents brief on page 21 thereof as the "San Francisco Charter", and elaborated on in the oral argument by counsel for respondents; but said clause *the* [fol. 178] *oral argument by counsel for respondents; but said Clause* of Article VI of the Constitution of the United States was not submitted to the court, or its provisions applied to said charter through inadvertence of counsel for respondents'. It reads as follows:

> "This constitution, and the laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

Art. 55 (c) of said charter reads:

> "The United Nations shall promote * * * uniform respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion."

Art. 56 of said charter further states that:

> "All members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55."

And in Hanenstein v. Lynham, 100 U. S. 483, loc. cit. 490, it is said:

> "It must be borne in mind that the Constitution, laws, and treaties of the United States are as much a part of the law of every state as its own local law and constitution."

7. Because, in overlooking stipulation 3 contained in the transcript of the record at page 4 thereof, and failing to apply and follow the rulings and decisions in Ozark Land & Lumber Co. v. Franks, supra, and Gatewood v. House, supra, the decision and opinion of the court deprives the respondents of their property without due process of law and denies to them the equal protection of the laws, contrary to section 1 of the Fourteenth Amendment of the United States. Said stipulation reads as follows:

(See stipulation 3 on page 4 of the Transcript of the Record, supra.)

By failing to take notice of said stipulation and to apply to it the well-settled rules of law laid down in the cases last above cited, and others to the same effect cited and approved repeatedly by the Supreme Court of Missouri, the decision and opinion are in conflict with and contrary to the ruling in Federal Land Bank v. McColgan, 332 Missouri, par. 5, pp. 866-867, which through inadvertence of [fol. 179] counsel for respondents' was not submitted to the court at the hearing hereof, and which reads as follows:

> "It has been ruled by this court that if the description in a deed is void for uncertainty its record does not impart notice (citing Gateweood v. House, 65 Mo. 663, 57 S. W. 540; and Mudd v. Dillon, 166 Mo. 110, 65 S. W. 973). In these cases only the parties to the conveyance and those having actual knowledge were bound."

This is the last ruling on the question by the Supreme Court of Missouri, and the decision and opinion, in effect, is in conflict therewith and contrary thereto.

Wherefore, respondents respectfully pray that their motion be sustained and a rehearing granted.

Geo. W. Vaughn, Attorney for Respondents, 2316a Market Street, St. Louis, Missouri.

Received service of the above motion of respondents for rehearing this — day of December, 1946.

——, Attorney for Appellant.

[fol. 180] IN THE SUPREME COURT OF MISSOURI EN BANC.
SEPTEMBER 1946 SESSION

[Title omitted]

[File endorsement omitted]

RESPONDENTS' MOTION TO MODIFY—Filed December 24, 1946

Come now Respondents and respectfully aver that the Court has overlooked a material and decisive question and its decision and opinion are erroneous in the following regards:

1. That on page 4 of the Transcript of the Record stipulation 3 reads as follows:

> "3. It is further stipulated and agreed that said restrictive agreement does not contain the lot number of any parcel or lot of ground mentioned therein, nor does it contain any reference to any other recorded document wherein such information is found."

2. The decision and opinion of the Court fail to mention or deal with the facts set out in said stipulation, but instead, treat said agreement as being sufficient to impart constructive notice of the restrictions on the property mentioned in said agreement, although neither said agreement nor any recorded instrument referred to therein contains sufficient information, nor describes the property mentioned therein to enable a stranger to said agreement to determine what property is being restricted.

3. Wherefore, the premises considered, respondents pray the Court to modify said opinion and decision to the extent

that said stipulation 3 shall be noted and passed upon by the Court, and that the rule of law laid down in Ozark Land & Lumber Co. v. Franks, 57 S. W. 540, loc. cit. 543; Gatewood v. House, 65 Mo. 653, and Federal Land Bank v. McColgan, 332 Missouri, pp. 866, 867, paragraph 5, be applied to the facts contained in said stipulation.

Geo. W. Vaughn, Attorney for Respondents, 2616 Market St., St. Louis, Mo.

[fol. 181] Served the above motion on the Appellants by mailing an exact copy thereof to Mr. G. L. Seegers, attorney of record for Appellants, to him at his office, 1722 Olive Street, St. Louis, Missouri, postage paid, this 23rd day of December, 1946.

Geo. W. Vaughn, Attorney for Respondents.

I hereby certify to the foregoing certificate of service.

Geo. W. Vaughn.

[fol. 182] IN SUPREME COURT OF MISSOURI

[Title omitted]

ORDER OVERRULING MOTIONS FOR REHEARING AND TO MODIFY OPINION—January 13, 1947

Now at this day, the court having seen the respondents' motion for a rehearing and respondents' motion to modify opinion, doth order that each of said motions be, and they are hereby overruled.

IN SUPREME COURT OF MISSOURI

[Title omitted]

ORDER STAYING MANDATE—February 10, 1947

Now at this day, the court having seen and considered the motion of the respondents to recall and stay the mandate in the above entitled cause, doth order that said mandate be stayed pending application for certiorari to the United States Supreme Court.

[fol. 183] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 184] IN THE SUPREME COURT OF MISSOURI EN BANC

[Title omitted]

[File endorsement omitted]

DESIGNATION OF THE RECORD FOR CERTIORARI—Filed February 24, 1947

The clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above entitled cause, including therein the following:

1. Record sent to the Supreme Court of Mo. by the clerk of the Circuit Court of the City of St. Louis, Division No. 3.
2. Extract from Points and Authorities from Statement, Brief and Argument of Respondents covering Points VIII, IX, X, and Point III.
3. Minute showing Argument.
4. Opinion of the Supreme Court of Missouri rendered Dec. 9, 1947.
5. Judgment of the Court of Dec. 9, 1947.
6. Respondents' petition for rehearing and motion for modification of the opinion of the Supreme Court of Missouri.
7. Order of the court denying the petition for rehearing and overruling the motion for modification of opinion.
8. Order of the court of Feb. —, 1947, recalling and staying the mandate to permit application for certiorari.
9. Judgment of the Circuit Court, Div. No. 3.
10. Clerk's certificate.
11. Together with a copy of this designation.

Geo. W. Vaughn, Attorney for Respondents.

Proof of Service

A copy of the above designation of the record was served upon the appellants by mailing a carbon duplicate thereof to their attorney of rec-rd, G. L. Seeger, addressed to his office in the City of St. Louis, Missouri, postage prepaid this 23rd day of February, 1947.

Geo. W. Vaughn, Attorney for Respondents.

[fol. 171] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. —

J. D. SHELLEY and ETHEL LEE SHELLEY, His Wife,
Petitioners,

vs.

LOUIS E. KRAEMER and FERN W. KRAEMER, His Wife

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioners,

It Is Ordered that the time for filing a petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 22d, 1947.

Wiley Rutledge, Associate Justice of the Supreme Court of the United States.

Dated this 10th day of April, 1947.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 23, 1947

The petition for a writ of certiorari to the Supreme Court of the State of Missouri is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Reed took no part in the consideration or decision of this application.